UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA *v.* **GREGORY B. CRAIG**, *Defendant.*	**Case No. 1:19-cr-0125 (ABJ)**

DEFENDANT'S MOTION TO DISMISS COUNT ONE

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INTRODUCTION

Pursuant to Rule 12(b)(3)(A)(v) and (B)(v) of the Federal Rules of Criminal Procedure, Defendant Gregory B. Craig moves for dismissal of Count One of the Indictment on multiple grounds: (1) Count One is defective as a matter of law because it depends on a legal duty to disclose information to the Justice Department's "FARA Unit" that does not exist; (2) Count One is defective because it was returned by a grand jury that had been erroneously instructed about that nonexistent legal duty; and (3) Count One is based in part on events outside of the applicable period of limitations. The first and third grounds are straightforward legal flaws evident on the face of the indictment. The second addresses prejudicial error in the instructions that the grand jury received about the controlling law; that error is also clear on the face of the Indictment.

In *United States v. Safavian*, 528 F.3d 957 (D.C. Cir 2008), the Court of Appeals left no doubt that a prosecution under 18 U.S.C. §1001(a)(1) cannot be based upon omissions by a defendant of facts that he had no specific obligation to disclose. This prosecution asks the Court to ignore that holding and the principles upon which it is based. Count One asserts that Mr. Craig violated § 1001(a)(1) by withholding information from the FARA Unit in response to questions it posed to him regarding a report he had co-authored for the Ukraine Ministry of Justice. Indictment, ECF No. 1, ¶¶ 47–65. Specifically, "in his communications with the FARA Unit," Mr. Craig is alleged to have "omitted material facts regarding his acts in furtherance of Ukraine's media plan and [his] contacts with [two reporters from *The New York Times*]." *Id.* ¶ 50.c. Count One contains a list of ten allegedly material facts that the government faults Mr. Craig for failing to mention during his communications with the FARA Unit, "either in writing or in person." *Id.* ¶ 63.

It is not a crime to omit material facts in response to questions from a government official absent a specific legal duty to disclose those facts. *Safavian*, 528 F.3d at 964. In an

apparent nod to *Safavian*, the government posited such a duty on the face of the Indictment: "Under FARA, when responding to the FARA Unit's inquiries, [Mr. Craig] had a duty to provide material information and not to willfully make misleading statements or omit material facts." Indictment ¶ 52. That allegation cannot save this defective prosecution. It is simply wrong as a matter of law.

No provision of FARA, or any other applicable law, imposes such a duty upon an individual voluntarily communicating with the FARA Unit about a potential obligation to register. There is nothing in FARA that requires an individual who is voluntarily answering questions from the FARA Unit to "choose between saying everything and saying nothing." *Safavian*, 528 F.3d at 965. Because the government has accused Mr. Craig of omitting material facts that he was under no legal duty to disclose, Count One must be dismissed for failure to state an offense. Fed. R. Crim. P. 12(b)(3)(B)(v).[1]

The same legal error infected the grand jury proceedings and requires dismissal of Count One even if it were not deficient for failing to state an offense. Fed. R. Crim. P. 12(b)(3)(A)(v).

[redacted], and there is grave doubt that the grand jury's decision to indict was free from substantial influence caused by that error. *See Bank of Nova Scotia v. United States*, 487 U.S. 250, 256 (1988).

Finally, Count One relies in part on time-barred conduct. The charged offense is alleged to have occurred "[f]rom on or about June 3, 3013, to on or about January 16, 2014," Indictment

[1] The resolution of this motion does not depend in any way on a determination of willfulness, although § 1001 requires that a defendant acted "knowingly and willfully" by concealing or omitting to state material facts to the FARA Unit by a "trick, scheme, or device." Absent proof that Mr. Craig was informed about the alleged duty of full disclosure that the government now asserts, it is difficult to conceive how the prosecution will prove that his actions were "knowing and willful," as alleged generally in Paragraph 48 of the Indictment.

¶ 48, but even accounting for tolling agreements, the relevant date for limitations purposes is October 3, 2013. Because § 1001(a)(1) does not codify a continuing offense, conduct outside the statute of limitations cannot be charged as part of Count One.

COUNT ONE OF THE INDICTMENT

Before turning to the legal defects that require dismissal, we describe (A) the factual allegations incorporated in Count One, (B) the "scheme" offense that Count One charges, and (C) the proceedings that resulted in the grand jury's decision to indict Mr. Craig on Count One.

A. Factual Allegations Incorporated in Count One

The evidence in this case would not establish any crime, and if a trial occurred, would require a judgment of acquittal. In this Motion, we address the Indictment as written and assume, as we must, that its allegations are true. *See United States v. Hillie*, 289 F. Supp. 3d 188, 193 (D.D.C. 2018).

The Skadden Report and its Public Release

In 2011, former Ukrainian Prime Minister Yulia Tymoshenko was prosecuted and convicted for abusing her official powers while in office. Indictment ¶ 6. The prosecution was widely criticized by Western governments and media as "politically motivated and unfair." *Id.* In early 2012, the Ukrainian Ministry of Justice engaged the law firm Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden") to conduct an inquiry and write a report on the question of "whether, under Western standards of justice, Tymoshenko had received a fair trial." *Id.* ¶ 7. An express condition of the engagement was that Skadden's inquiry and report would be "independent." *Id.*

At Mr. Craig's direction, Skadden lawyers researched the question of whether their work for Ukraine would require registering under FARA, especially since Ukraine had "asked for PR [public relations] advice." *Id.* ¶ 14; *see also id.* ¶¶ 9, 15. On April 17, 2012, a Skadden associate

relayed a message from Kenneth Gross, a Skadden partner with FARA expertise, in the following email to Mr. Craig (the bolded portions of which are misleadingly omitted from the Indictment):

> ***In [Mr. Gross's] view, our work writing a report evaluating the Ukraine proceedings would not trigger FARA obligations. However***, if we were to perform public relations work aimed at the US, if our London lawyers were to do so, or if we were to subcontract a PR firm to do so, then we would be obligated to register under FARA. ***(If the Ukrainian Government were to hire the PR firm directly, then FARA would not come into play for us.)***

Id. ¶ 15 (un-bolded portions only); Ex. 1 (complete email).[2] Shortly thereafter, Mr. Craig encouraged Ukraine to hire a public relations firm directly, without Skadden being placed in the middle of that contractual relationship, and Ukraine did so. Indictment ¶¶ 18, 20. When an executive at the public relations firm asked whether his firm could subcontract through Skadden, Mr. Craig "rejected the idea," explaining that such an arrangement could be "seen as hiring and directing" the public relations firm, and reiterating that he "ha[d] been clear that we cannot run close to the FARA line." *Id.* ¶ 20.

Skadden conducted its investigation and prepared its report through the spring and summer of 2012, completing a draft in August. *Id.* ¶¶ 23, 29. The report assessed eight issues raised by Ms. Tymoshenko during the course of her trial and appeal, and as to several of them, the report identified significant violations of Ms. Tymoshenko's rights when viewed from the perspective of Western standards of due process. *See* Ex. 2 at i, 1–5.[3] For example, the report

[2] We have attached the full email as Exhibit 1, which the Court may consider because it has been incorporated in the Indictment. *Cf. Farah v. Esquire Magazine*, 736 F.3d 528, 534 (D.C. Cir. 2013).

[3] Exhibit 2 is comprised of the Skadden report's cover page, table of contents, executive summary, and introduction. Exhibit 2 is drawn from the complete copy of the report that is publicly available on the FARA Unit's website. https://efile.fara.gov/docs/6617-Informational-Materials-20190118-2.pdf. This Court may take judicial notice of the contents of a document that is publicly available on a government website. *Cannon v. District of Columbia*, 717 F.3d

concluded that, "[u]nder Western standards, the continued examination of witnesses without representation by counsel would almost certainly be viewed as a violation of the right to assistance of counsel." *Id.* at 4. The report also concluded that, "[u]nder Western standards of fairness, . . . the Court's decision not to call certain defense witnesses compromised Tymoshenko's ability to present a defense." *Id.*

The report expressly declined to take a position on Ms. Tymoshenko's guilt or innocence. *Id.* at 5. As for whether the prosecution was politically motivated, the report noted that "[t]he prosecution of a former head of government, unsuccessful presidential candidate, and leader of the opposition merits close scrutiny in all respects." *Id.* The report made clear, however, that it did not address that issue: "In this report, we do not opine about whether the prosecution was politically motivated or driven by an improper political objective." *Id.* For several months after Skadden sent a completed version of the report to Ukraine, Ukraine delayed releasing it to the public. *See* Indictment ¶¶ 29, 33, 36, 43.

During the course of the project, Mr. Craig learned that the Ukrainian government was unhappy with the report's conclusions, and he became concerned that someone working with the Ukrainian government or its lobbyists would "falsely leak a story" to the press that mischaracterized the report's findings so as to make them appear more favorable to Ukraine. Indictment ¶ 21. On July 30, 2012, around the time that Skadden completed a draft of the report, Mr. Craig wrote to Paul Manafort, a political consultant engaged by Ukraine's President Victor Yanukovych, and told him that "[t]he worst thing that could happen to the project, to this law firm, to your guy and to me would be to have someone on your side falsely leak a story that

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200, 205 n.2 (D.C. Cir. 2013); *see also United States v. Class*, 38 F. Supp. 3d 19, 25 (D.D.C. 2014) (considering facts subject to judicial notice on a motion to dismiss an indictment).

'[Skadden] Finds Tymoshenko Guilty' [or] '[Skadden] Report Exonerates Ukraine.' That kind of story would be a disaster." *Id.*

In September 2012 Mr. Craig received a draft public relations plan, compiled by Ukraine's public relations firm, which stated that the Report's public release would "provide an opportunity for the ***independent endorsement*** of the Government message that the trial of Yulia Tymoshenko (YT) ***was not politically motivated***." *Id.* ¶ 30 (emphasis added). This public relations plan, and several related documents that Mr. Craig received during September 2012, confirmed his worst fears that the "disaster" he had anticipated about Ukraine distorting the findings of the report to serve its own interests, was likely to occur.[4]

On December 11 and 12, 2012, the days immediately before the report was scheduled to be released to the public, Mr. Craig provided a copy of the report to a *New York Times* reporter, *id.* ¶ 39, and gave an on-the-record quotation to a second *Times* reporter: "We leave to others the question of whether this prosecution was politically motivated. Our assignment was to look at the evidence in the record and determine whether the trial was fair." *Id.* ¶ 40. The *Times* article, headlined *Failings Found in Trial of Ukrainian Ex-Premier*, observed that the report "concluded that important legal rights of the jailed former prime minister, Yulia V. Tymoshenko, were violated during her trial." *Id.*[5]

[4] Mr. Craig's email correspondence with his colleagues at Skadden, with Mr. Manafort, and with the Ukraine's public relations firm, dated in late September, 2012, was sharply critical of the false "spin" being placed on the report's conclusions by Ukraine and its consultants. That email traffic explains why Mr. Craig thereafter was not included as a recipient of any of the later iterations of the media plans. But these emails have been completely omitted from the Indictment.

[5] *See also* David M. Herzenhorn & David E. Sanger, *Failings Found in Trial of Ukrainian Ex-Premier*, THE NEW YORK TIMES (Dec. 12, 2012), https://www.nytimes.com/2012/12/13/world/europe/failings-found-in-trial-of-ukrainian-ex-premier.html.

Also on December 12, 2012, Mr. Craig gave a telephone interview to a reporter with *The Daily Telegraph*, a London newspaper. *Id.* ¶ 41. Following that interview, Mr. Craig was quoted on the record in *The Telegraph*, and he corrected false statements attributed to the Ukraine Ministry of Justice about the report's conclusions.[6] The Indictment alleges that Mr. Craig's contacts with *The New York Times* and *The Daily Telegraph* were "in furtherance of Ukraine's public relations strategy regarding the report." *Id.* ¶ 42; *see also id.* ¶ 63.

Ukraine released the report to the public on December 13, 2012. Soon thereafter, Skadden communicated with reporters from *The Los Angeles Times* and *The National Law Journal*, and provided copies of the report to them. *Id.* ¶ 44.

Skadden's FARA Unit Communications

On December 18, 2012, a few days after Ukraine released Skadden's report to the public, the FARA Unit sent a letter to Skadden indicating that it might be required to register as a foreign agent under FARA, and "requesting additional information" about Skadden's work for Ukraine. Indictment ¶ 51.[7] The FARA Unit regularly issues letters seeking information from individuals and entities who might be obligated to register as foreign agents under FARA. *See* Ex. 11 ("OIG Audit").[8] Such letters are not referenced anywhere in the statute, and as the Chief

[6] *See* Tom Parfitt, *Trial of Ukraine's Tymoshenko flawed says government-commissioned report*, THE TELEGRAPH (Dec. 13, 2012), https://www.telegraph.co.uk/news/worldnews/europe/ukraine/9741037/Trial-of-Ukraines-Tymoshenko-flawed-says-government-commissioned-report.html.

[7] The entire written correspondence between the FARA Unit and Skadden is enclosed as Exhibits 3 through 10. The letters are incorporated by reference in the Indictment, *see* ¶¶ 51, 53–58, 62, 64, but the Court need not consult them to decide this Motion.

[8] A 2016 report by the Office of Inspector General explained, "When a potential obligation to register is found, the unit issues a letter of inquiry to the potential registrant advising of FARA requirements, and requests additional information relevant to registration status. . . . The FARA Unit stated it has issued approximately 130 letters of inquiry over the past ten years. Thirty-eight of the recipients were found to have an obligation to register under FARA, and subsequently did so. The remaining recipients were found to either have no obligation to register, or the FARA Unit is continuing to seek additional information to make a determination." U.S. Dep't of

of the FARA Unit explained in 2018, "[n]othing in the FARA statute compels the potential registrant to respond." Ex. 12 at 2 (Form FD-302a, Interview of Heather Hunt (May 23, 2018)); *see also* OIG Audit at ii (noting that the FARA Unit "lack[s]authority to compel the production of information from persons who may be agents").

On February 6, 2013, Mr. Craig, acting on Skadden's behalf, signed a letter responding to the questions in the letter from the FARA Unit, and described Skadden's work on the report. *Id.* ¶ 53. Skadden's engagement agreement with the Ukraine Ministry of Justice was attached, and in Skadden's response letter, Mr. Craig described the provision of the engagement agreement that specified that Skadden would **not** perform any activities that would require it to register under FARA. *Id.*

The Skadden report was funded in large part by a "private Ukrainian" third-party payor, *id.* ¶ 12, and in Skadden's February 6, 2013 letter to the FARA Unit, Mr. Craig disclosed that a "private citizen of Ukraine" had helped to fund Skadden's work. *Id.* ¶ 54. The contract between Skadden and the Ukraine Ministry of Justice, which Skadden attached to the letter, did not identify the third-party payor. *Id.* ¶ 13. When the FARA Unit subsequently asked Skadden to identify that individual, *id.* ¶ 54, Mr. Craig respectfully declined to do so in light of Skadden's position that the firm was not required to register under FARA, and the private Ukrainian's strong preference for continued anonymity. *Id.* ¶¶ 25–26, 57.

The FARA Unit wrote back to Mr. Craig on April 9, 2013. *Id.* ¶ 54. In addition to reiterating its request for the identity of the third-party payor, the FARA Unit also requested answers to several specific questions, including: "'To whom, if anyone, did your firm release or

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Justice, Office of the Inspector General, *Audit of the National Security Division's Enforcement and Administration of the Foreign Agents Registration Act* 13 (Sept. 2016), https://oig.justice.gov/reports/2016/a1624.pdf (excerpt attached as Exhibit 11).

distribute the report and when?'; what had been [Skadden's] understanding of 'what would happen to the report when it was released to the Ukraine Ministry of Justice?'; and 'Did you or anyone in your firm have any media interviews or comments to the media, public, or government officials about the report and the findings of your firm?'" *Id.* ¶ 54.

Mr. Craig responded to the FARA Unit again, on behalf of Skadden, in a letter dated June 3, 2013, answering each of the questions it had asked. *Id.* ¶ 56. As to Skadden's release or distribution of the report, Mr. Craig wrote, *inter alia*, "that 'the law firm on December 12–13, 2012 provided a copy of the report to (1) [Tymoshenko's legal team]; (2) [a representative of the private Ukrainian]; (3) [Reporter 1 of *The New York Times*]' and the two publications with which [Skadden] had communicated after the Report's release." *Id.* ¶ 56 (first and second brackets in Indictment). The December 12, 2012 article in *The New York Times* had itself "stated that the Report would be publicly released the following day," *id.*, ¶ 40, thus making clear that its reporters had spoken with Mr. Craig and reviewed a copy of the report before its public release.

In answering the question about Skadden's expectation of what would happen to the report once it was in the hands of the Ukraine Ministry of Justice, Mr. Craig wrote that "the law firm viewed the distribution of the report as a matter that would be decided by the Ukraine Government in its sole discretion. The law firm did not advise the Ministry on that issue." *Id.* ¶ 56. And as for comments to the media, the letter stated that "[Skadden] issued no statements and made no comments to the media, the public or government officials about the report. Gregory Craig provided brief clarifying statements about the report to [Reporter 1 of *The New York Times* and to reporters at *The Los Angeles Times* and *The National Law Journal*]." The letter continued, "One purpose of the statements was to correct misinformation that the media

had received – and was reporting – from the Ministry of Justice and from the Tymoshenko legal team in Ukraine." *Id.*

On September 5, 2013, the FARA Unit wrote to Mr. Craig stating that Skadden was obligated to register as a foreign agent because of its communications with the media and because it had "disseminated" the report. *Id.* ¶ 58. After speaking with Skadden's general counsel by phone on September 19, 2013, Mr. Craig wrote him two messages—an email on September 19 and a draft letter on September 20—disputing several conclusions in the FARA Unit's letter, including that Skadden had "disseminate[d] the report to the news media." *Id.* ¶¶ 59–60. The Indictment alleges that certain statements in the email and draft letter were "false and misleading." *Id.* At the time, Mr. Craig had not reviewed the email records of his media contacts from December, 2012. *See id.* ¶ 59 ("To the best of my recollection . . ."). Neither Skadden nor Mr. Craig ever sent any version of the email or draft letter to the FARA Unit. *See id.* ¶ 60.

Rather than respond in writing to the FARA Unit's September 5, 2013 letter, Mr. Craig and Skadden arranged to meet with the Chief of the FARA Unit, and three of her colleagues, in person. *Id.* The meeting occurred on October 9, 2013, and Mr. Craig attended along with Lawrence Spiegel, Skadden's general counsel, and Kenneth Gross, the partner with prior FARA expertise who had given FARA advice at the beginning of the Ukraine project in April 2012. *Id.* ¶ 61; *see also id.* ¶ 15. At the end of the meeting, the FARA Unit Chief requested that Skadden send a follow-up letter summarizing the main points from the meeting. We have since learned, [redacted], that the notes from the meeting prepared by a member of the FARA Unit cannot be found, and that no other notes or memoranda exist recording what was said at the meeting. Mr. Craig wrote the requested letter summarizing Skadden's position that it

had no duty to register the following day, and the letter was sent to the FARA Unit on October 11, 2013. *Id.* ¶ 62. In the follow-up letter, Mr. Craig wrote that the law firm had provided copies of the report to certain media outlets "in response to requests from the media," and that "[i]n responding to inaccuracies in U.S. news reports – some of which were directly attributable to Ukraine – [Skadden] did not consult with Ukraine, did not inform Ukraine, did not act under instruction from Ukraine and was in no way serving as an agent for Ukraine." *Id.* On January 16, 2014, the FARA Unit wrote to Skadden agreeing with its position that it did not need to register under FARA as an agent of Ukraine. *Id.* ¶ 64.

The Indictment does not allege that the FARA Unit asked – at any point, either orally or in writing – whether Ukraine had engaged a public relations firm in connection with the release of the report, and if so, whether Skadden had had any interaction with the public relations firm. *See id.* ¶¶ 51, 54, 58, 61.

B. The "Scheme" Offense Charged in Count One

Count One charges that Mr. Craig "did unlawfully, knowingly and willfully falsify, conceal and cover up by a trick, scheme and device material facts in a matter within the jurisdiction of the FARA Unit" in violation of 18 U.S.C. § 1001(a)(1). *Id.* ¶ 48. As the "manner and means" of the scheme, Mr. Craig is alleged to have: (1) withheld information about his contacts with *The New York Times* from other Skadden lawyers, *id.* ¶ 50.a; (2) "drafted" false and misleading descriptions of his contacts with *The New York Times* for distribution within Skadden and to the FARA Unit, *id.* ¶ 50.b; and (3) "*omitted material facts* regarding his acts in furtherance of Ukraine's media plan and [his] contacts with [*The New York Times*] *in his communications with the FARA Unit*," *id.* ¶ 50.c (emphasis added). These specifications thus do not focus upon allegations concerning material false statements made to the FARA Unit; instead,

they make clear that the charged offense is based on material facts *withheld* from that government agency. The Indictment does not charge a violation of subsection (a)(2) of § 1001, which criminalizes making false statements to a government agency.

The essence of the charged offense is in Paragraph 63 – a bullet-point list of ten "material facts" that, allegedly, (1) Mr. Craig did not disclose, "either in writing or in person," at any time during his communications with the FARA Unit, and (2) the omission of which was knowing and willful. The Indictment asserts that, "[u]nder FARA," Mr. Craig "had a duty" to disclose these facts "when responding to the FARA Unit's inquiries." *Id.* ¶ 52. The ten omitted facts all relate to Ukraine's public relations strategy, its hiring of a public relations firm, the media strategy developed by that public relations firm, and actions that Mr. Craig undertook that are alleged to have been "consistent with the media strategy." *Id.* ¶ 63.

Although the Indictment alleges that certain false and misleading statements were included in some of Mr. Craig's written communications with the FARA Unit, those statements are encompassed within the charged "concealment" of the material facts listed in Paragraph 63. *See Safavian*, 528 F.3d at 962 (referencing a concealment scheme comprised of both "statements and omissions"). For example, Paragraph 56 of the Indictment lists several statements in Mr. Craig's letter of June 3, 2013, characterizing all of them collectively as "material false and misleading statements and omissions." To understand what the government believes is wrong with the listed statements, one must read them in tandem with the omitted facts listed in Paragraph 63. The government appears to fault the statement that Skadden provided copies of the report to various recipients "on December 12-13, 2012," *see id.* ¶ 56, because it ***omits*** the allegedly material fact that Mr. Craig also provided a copy of the report to a *New York Times* reporter on December 11, *see id.* ¶ 63. Similarly, the government appears to fault the statement

that Skadden "did not advise" Ukraine regarding "the distribution of the report," *see id.* ¶ 56, because it ***omits*** the allegedly material facts that Mr. Craig "recommended and facilitated Ukraine's hiring of the PR firm" and "suggested [to the PR firm] that Reporter 1 receive a copy of the Report in connection with the Report's rollout," *id.* ¶ 63.

The allegations in Paragraph 61 (regarding the in-person meeting on October 9, 2013) and Paragraph 62 (regarding the follow-up letter dated October 10, 2013) follow the same pattern. The omitted "material facts" in Paragraph 63 explain what the Indictment alleges is misleading about Mr. Craig's alleged oral statement that his media contacts "were solely reactive and for the purpose of correcting misinformation," *id.* ¶ 61, his written statement that he provided copies of the report "in response to requests from the media," *id.* ¶ 62, and his written statement that Skadden "did not consult with Ukraine, did not inform Ukraine, [and] did not act under instruction from Ukraine" when "responding to inaccuracies in U.S. news reports – some of which were directly attributable to Ukraine." *Id.*

C. The Grand Jury Proceedings[9]

[redacted]

[9] The material included in this portion of the Motion is based on grand jury transcripts that the government made available to the defense in discovery with the Court's permission. Those transcripts support a showing that the grand jury received erroneous instructions concerning the elements of the charged offense under §1001(a)(1). *See* Part I.C, *infra*. We are redacting these materials because, at the scheduling conference on April 15, 2019, the government only sought the Court's permission to disclose them to the defense. We believe that these grand jury transcripts are no longer subject to any requirement of confidentiality under Rule 6(e), *see* Fed. R. Crim. P. 6(e)(2)(A), and we intend to seek leave from the Court to file an unredacted version of this Motion on the public docket.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

On April 11, 2019, the grand jury returned the Indictment, charging a violation of the "scheme" provision of 18 U.S.C. § 1001, but no violation of the false statement provision. Indictment, ECF No. 1. The Indictment contains the erroneous assertion that, in responding to inquiries from the FARA Unit, Mr. Craig was subject to a legal duty to provide material information **and not to willfully omit material facts**. *Id.* ¶ 52.

ARGUMENT

I. Count One must be dismissed because Mr. Craig had no duty to disclose the facts he is alleged to have withheld.

Count One unmistakably charges a withholding of material facts. It alleges that Mr. Craig withheld facts to avoid being ordered to register. *Id.* ¶¶ 48–49. Paragraph 63 could not be clearer on this point: "At no time, either in writing or in person, did CRAIG inform the FARA Unit of various facts material to the FARA Unit's inquiry"—specifically, a list of ten omitted facts. *Id.* ¶ 63; *see supra* at 12–13 (showing relationship of Paragraph 63 to Count One as a whole). The legal question, therefore, is whether the failure to disclose these "material facts" violated §1001(a)(1).

[redacted]

Count One is fatally defective because omitting facts in a communication with the government is not a crime unless there is a specific legal duty to disclose the omitted facts. *Safavian*, 528 F.3d at 964. The government appears to acknowledge that it must establish such a legal duty in order to state the offense described in Count One. It attempts to assert a disclosure duty in the Indictment itself, alleging that, "[u]nder FARA, when responding to the FARA Unit's inquiries, CRAIG had a duty to provide material information and not to willfully make misleading statements or omit material facts." Indictment ¶ 52.

There is no duty "under FARA" to volunteer all potentially relevant information in response to questions from the FARA Unit, and the government's assertion of such a duty is wrong as a matter of law. Count One rests on an erroneous guilt-by-omission theory, and it must therefore be dismissed. Fed. R. Crim. P. 12(b)(3)(B)(v).

A. It is not a crime under § 1001(a)(1) to omit or conceal material facts absent a specific legal duty to disclose them.

"Section 1001 proscribes two different types of conduct: concealment of material facts and false representations." *United States v. Singhal*, 876 F. Supp. 2d 82, 93 (D.D.C. 2012) (citation omitted). The prohibition on concealment of material facts is much narrower, because it is not generally a crime to omit relevant information in response to an inquiry from the government. *See Safavian*, 528 F.3d at 964. A prosecution for an omission must rest on "a legal duty to disclose" the omitted information. *Id.*; *see also United States v. Blackley*, 167 F.3d 543, 550 (D.C. Cir. 1999). Whether omitted information was subject to a legal duty to disclose is a question that "the Court must first decide, as a matter of law." *United States v. Crop Growers Corp.*, 954 F. Supp. 335, 345 (D.D.C. 1997); *see also Singhal*, 876 F. Supp. 2d at 93–96 (granting pretrial motion to dismiss indictment after finding no duty to disclose).

Limiting omission prosecutions to situations in which there was a specific affirmative disclosure duty protects the defendant's right to due process under the Fifth Amendment. *See Safavian*, 528 F.3d at 964; *Singhal*, 876 F. Supp. 2d at 95. There can be no crime for failing to disclose information absent a pre-existing legal duty to do so because a "defendant must have 'fair notice of what conduct is forbidden.'" *Singhal*, 876 F. Supp. 2d at 95 (quoting *United States v. Kanchanalak*, 192 F.3d 1037, 1046 (D.C. Cir. 1999)).

For that reason, any prosecution for omissions under § 1001(a)(1) must be rooted in "*specific* requirements for disclosure of *specific* information." *Safavian*, 528 F.3d at 964 (emphasis added); *see also id.* (explaining that the requirement of fair notice under the Fifth Amendment provides "good reason for demanding such specificity"). Due process also demands that some legal authority—*e.g.*, a statute, regulation, or government disclosure form—must have "unambiguously" required disclosure of the omitted information. *Crop Growers Corp.*, 954 F. Supp at 347; *see also id.* at 345 (echoing Ninth Circuit's view that "where the statute and its implementing regulations were ambiguous as to whether they required disclosure, . . . imposition of criminal liability would offend due process considerations" (citing *United States v. Murphy*, 809 F.2d 1427 (9th Cir. 1987)).[12]

[12] In cryptically and erroneously asserting that Mr. Craig had a duty to disclose material information "[u]nder FARA," Indictment ¶ 52, the government has failed to identify any specific provision that supposedly created the duty. In fact, no provision of FARA creates such a duty. As described in more detail in the Motion to Dismiss Count Two, all of FARA's affirmative disclosure provisions prescribe pieces of information that must be disclosed in registration statements, supplements, and accompanying documents—not in voluntary responses to inquiries from the FARA Unit. *See* 22 U.S.C. § 612(a)–(b). FARA's false statement provision is likewise limited to statutorily required documents, *id.* § 618(a)(2).

In the context of a "voluntary" communication to the government, there is no disclosure duty, and a prosecution under § 1001(a)(1) for omitting relevant information cannot stand. *Safavian*, 528 F.3d at 964. That includes voluntary responses to questions from a government official. In *Safavian*, the government tried to advance the position that "once one begins speaking when seeking government action or in response to questioning, one must disclose all relevant facts." *Id.* at 965. The court flatly rejected it:

> Attorneys commonly advise their clients to answer questions truthfully but not to volunteer information. Are we to suppose that ***once the client starts answering a government agent's questions***, in a deposition or during an investigation, the client must disregard his attorney's advice or risk prosecution under § 1001(a)(1)? The government essentially asks us to hold that once an individual starts talking, he cannot stop. ***We do not think § 1001 demands that individuals choose between saying everything and saying nothing. No case stands for that proposition.***

Id. (emphasis added). As in this case, the indictment in *Safavian* charged the defendant with "'falsifying, concealing and covering up by a trick, scheme and device material facts' in violation of 18 U.S.C. § 1001(a)(1)." 528 F.3d at 962. Because the jury's guilty verdict relied on concealment of material facts that the defendant had no legal duty to disclose, the Court of Appeals reversed the conviction. *Id.* at 959, 965.

B. Mr. Craig had no legal duty to disclose the facts that the government faults him for omitting.

The Indictment recounts a series of communications between Mr. Craig and the FARA Unit, with each of Mr. Craig's communications responding to *requests* from the FARA Unit. Indictment ¶¶ 51, 53 (letter of February 6, 2013, responding to FARA Unit letter "requesting" information); *id.* ¶¶ 54–56 (letter of June 3, 2013, responding to FARA Unit letter "requesting" information); *id.* ¶ 62 (letter of October 11, 2013, sent "at the FARA Unit's request"). It is clear on the face of the Indictment that Mr. Craig's communications to the FARA Unit were voluntary; he had no duty to respond *at all*, let alone to volunteer all possibly relevant facts.

Paragraph 52 of the Indictment states: "Under FARA, when responding to the FARA Unit's inquiries, CRAIG had a duty to provide material information and not to willfully . . . omit material facts." That is simply wrong as a matter of law and cannot save the Indictment.

First, Mr. Craig did not have a legal duty to disclose all relevant information by virtue of the fact that he was "responding to the FARA Unit's inquiries," *id.*, and the government's assertion of such a duty flies in the face of both the binding precedent in *Safavian*, and the FARA statute. *See* note 12 *supra*. *Safavian* held in no uncertain terms that an individual has no freestanding obligation to "disclose all relevant facts" "in response to questioning" from a government official. 528 F.3d at 965. That principle carries the day here.

Most of the information that the government faults Mr. Craig for omitting—and that it claims would have been relevant to the FARA Unit's registration inquiry—was not responsive to the specific questions that the FARA Unit actually asked. *Compare* Indictment ¶ 54 (FARA Unit questions), *with id.* ¶ 63 (list of omitted facts). But no legal duty was violated even if Mr. Craig omitted *responsive* information, *Safavian*, 528 F.3d at 965, and that is so even if he gave answers that, by virtue of being non-responsive or incomplete, were "misleading by negative implication." *Bronston v. United States*, 409 U.S. 352, 353 (1973).[13]

Second, there is no special legal duty to supply all relevant information in response to government inquiries "[u]nder FARA," as the government asserts. Indictment ¶ 52. The FARA Unit regularly issues letters seeking information from individuals and entities who may be obligated to register. As set out above, and in the Motion to Dismiss Count Two, also filed today, such letters are not referenced anywhere in the statute, and as the Chief of the FARA Unit

[13] *Bronston* was a perjury case, *see* 409 U.S. at 353, but the D.C. Circuit has stated that *Bronston*'s holding applies to prosecutions under 18 U.S.C. § 1001. *See United States v. Milton*, 8 F.3d 39, 45 & n.7 (D.C. Cir. 1993).

explained in 2018, "[n]othing in the FARA statute compels the potential registrant to respond." Ex. 12 (Form FD-302a, Interview of Heather Hunt at 2 (May 23, 2018)); *see also* Ex. 11, OIG Audit at ii (noting that the FARA Unit "lack[s] authority to compel the production of information from persons who may be agents"). The Justice Department has repeatedly sought legislation that would authorize the FARA Unit to issue civil investigative demands to possible foreign agents so as to compel them to produce information, but those efforts have all failed. *See* OIG Audit at 18–19.[14] If there were truly already a duty "[u]nder FARA" to disclose all relevant information in response to inquiries from the FARA Unit, Indictment ¶ 52, the Justice Department would not need the additional statutory authority that has been denied by Congress.

The letters at issue in this case exemplify the precatory nature of the FARA Unit's requests for information. *See id.* ¶ 51 (FARA Unit's letter of December 18, 2013 "request[ed]" information); *id.* ¶ 54 (FARA Unit's letter of April 9, 2013 "request[ed] additional information"); *id.* ¶ 62 (Mr. Craig sent final follow-up letter "at the FARA Unit's request"). The letters that the FARA Unit sent to Mr. Craig stand in stark contrast to the forms that the FARA Unit has prescribed for disclosures that are *actually* required "under FARA." *See* Ex. 21 at 1 (form for FARA registration statements providing that "Provision of the information requested is mandatory, and failure to provide the information is subject to the penalty and enforcement provisions [of FARA]."). *See* Motion to Dismiss Count Two, at pages 14–16.

In voluntarily responding to the FARA Unit's inquiries, Mr. Craig was not subject to any legal duty to supply all relevant information, and certainly not one imposed by the statute itself.

[14] *See also* Olivia N. Marshall *et al.*, *BLOG: Updates on Congressional Action on FARA Reform*, CAPLIN & DRYSDALE, (Feb. 20, 2019), http://www.caplindrysdale.com/blog-updates-on-congressional-action-on-fara-reform?utm_source=Mondaq&utm_medium=syndication&utm_campaign=View-Original (listing several bills that would authorize the FARA Unit to issue civil investigative demands but noting that, as of February 2019, "efforts to update FARA have stalled in Congress").

But the theory of this prosecution depends on the existence of such a duty, a duty which as a matter of law does not exist. The government cannot simply create a legal duty by asserting that one existed. Count One does not charge a crime and must be dismissed.

C. The grand jury was erroneously instructed on the guilt-by-omission theory, and there is grave doubt that its decision to indict was free from substantial influence caused by the error.

Count One must be dismissed in its entirety for the additional reason that the grand jury proceedings were infected by legal error. Fed. R. Crim. P. 12(b)(3)(A)(v). When a defendant demonstrates that legal error occurred in the grand jury proceedings, "dismissal of the indictment is appropriate. . . if there is 'grave doubt' that the decision to indict was free from the substantial influence of such violations." *Bank of Nova Scotia v. United States*, 487 U.S. 250, 256 (1988) (citation omitted). Under this standard, an indictment must be dismissed where the grand jury receives erroneous legal instructions that may have "substantially influenced" its decision to indict. *See United States v. Stevens*, 771 F. Supp. 2d 556, 566–68 (D. Md. 2011) (dismissing indictment based on erroneous legal instructions to grand jury); *United States v. Peralta*, 763 F. Supp. 14, 19–21 (S.D.N.Y. 1991) (same). That is the case here.[15]

It is plain from both the face of the Indictment and [redacted] that the grand jury received erroneous legal instructions causing it to indict Mr. Craig on the legally incorrect omission theory described above.[16] The grand jury was

[15] If this standard is met, then dismissal is appropriate "even in the absence of willful prosecutorial misconduct." *Stevens*, 771 F. Supp. 2d at 568.

[16] We submit that there is no doubt that the grand jury was given this erroneous instruction of law, but if the Court has any doubt, we encourage the Court to order the government to produce the grand jury charging instructions. The erroneous assertion of a legal duty in Paragraph 52 of the Indictment supports a "particularized need" for the grand jury charging instructions in this case. *Cf. Singhal*, 876 F. Supp. 2d at 99 (finding no "particularized need" for disclosure of grand jury charging instructions because "Defendants are unable to identify any portion of the Indictment that suggests that any charge to the grand jury was legally erroneous").

erroneously instructed that Mr. Craig was subject to a legal disclosure duty when responding to inquiries from the FARA Unit. That erroneous instruction is reflected in paragraph 52 of the Indictment itself, and there is thus no doubt that the erroneous advice to that effect was presented to the grand jury.

[redacted]

Given [redacted], there is "grave doubt" that the grand jury's decision to indict Mr. Craig was free from substantial influence caused by the erroneous guilt-by-omission instructions. [redacted]

[redacted] *see also Stevens*, 771 F. Supp. 2d at 564, 568 (focusing on question from juror in concluding that grand jury's decision to indict had likely been influenced by erroneous legal instruction). [redacted], which is further reason to doubt that the grand jury made its decision to indict Mr. Craig free from substantial influence caused by the erroneous omission theory. *Cf. Peralta*, 763 F. Supp. at 19–21 (dismissing indictment upon discovering erroneous grand jury instructions about the elements of "constructive possession," even though there had been evidence presented at trial "sufficient to support a theory of *actual* possession," because constructive possession was "the legal theory

at the core of the government's case"). Finally, the grand jury *did not* indict Mr. Craig for making false statements under § 1001(a)(2), [redacted]

Given [redacted], it is overwhelmingly likely that the erroneous guilt-by-omission instructions substantially influenced the grand jury's decision to indict Mr. Craig. If Count One is not dismissed on its face, then it should be dismissed for grand jury error under Rule 12(b)(3)(A)(v).

II. In the alternative, Count One must be dismissed as to statements made or conduct occurring prior to October 3, 2013.

Even if one were to accept for the sake of argument that the government has properly alleged that Mr. Craig falsified, concealed, or covered up material facts by scheme in violation of 18 U.S.C. § 1001(a)(1), which it has not,[17] Count One must be dismissed for the independent reason that it would permit the jury to return a guilty verdict based on time-barred conduct.

Under the applicable statute of limitations, 18 U.S.C. § 3282(a), any offense must be charged within five years of being "complete." *Toussie v. United States*, 397 U.S. 112, 114

[17] For the avoidance of doubt, the allegations in Count One *do not* state an offense under 18 U.S.C. § 1001(a)(1). Aside from resting on a non-existent disclosure duty, as discussed in Part I above, Count One *at most* alleges a series of isolated false statements and omissions. Courts have held that "something more" than such isolated statements or omissions is required in order to state a "scheme" offense under § 1001(a)(1). *United States v. London*, 550 F.2d 206, 214 (5th Cir. 1977). S*ee also United States v. Woodward*, 469 U.S. 105, 108 & n.5 (1985) (explaining that the element of a "trick, scheme, or device" under § 1001(a)(1) requires some "affirmative act" of concealment (citation omitted)); *Safavian*, 528 F.3d at 967 n.12 ("[A] false statement alone cannot constitute a 'trick, scheme, or device'" under § 1001(a)(1).). For this reason as well, the allegations in Count One do not state a "scheme" offense. But to the extent that the Court deems the allegations sufficient to support a "scheme," it is clear from the face of the Indictment that the alleged offense was completed before October 3, 2013.

(1970). The Supreme Court has carved out a limited exception for "continuing offenses," *id.* at 115, but courts are nearly unanimous that *Toussie*'s "continuing offense" exception does not apply to "schemes" alleged under § 1001(a)(1). *See, e.g.*, *United States v. Dunne*, 324 F.3d 1158, 1164–66 (10th Cir. 2003). The "scheme" provision of § 1001(a)(1) allows the government to group several acts of falsification or concealment together in a single count for purposes of avoiding duplicity, *see Bramblett v. United States*, 231 F.2d 489, 491 (D.C. Cir. 1956), but the government cannot do so in a way that would permit the petit jury to convict based on time-barred conduct. Because the offense alleged in Count One was complete before October 3, 2013, Count One must be dismissed to the extent that it relies on statements made or other alleged conduct occurring before that date.[18]

A. Any conduct that could have been prosecuted as a completed "scheme" before October 3, 2013 is now time-barred.

"[S]tatutes of limitations normally begin to run when the crime is complete." *Toussie*, 397 U.S. at 115 (quoting *Pendergast v. United States*, 317 U.S. 412, 418 (1943)). A crime is "complete" for purposes of the statute of limitations "as soon as each element of the crime has occurred." *United States v. McGoff*, 831 F.2d 1071, 1078 (D.C. Cir. 1987). There is a narrow class of crimes for which the limitations period does not begin to run until later under the "doctrine of continuing offenses." *Toussie*, 397 U.S. at 115. "The classic example of a continuing offense is a conspiracy," *McGoff*, 831 F.2d at 1078, which continues, even after the elements are satisfied, "as long as the conspirators engage in overt acts in furtherance of their

[18] The grand jury returned the Indictment on April 11, 2019, *see* ECF No. 1, and absent any period of tolling, the statute of limitations would bar prosecution for any offense committed more than five years earlier – *i.e.*, prior to April 11, 2014. See 18 U.S.C. § 3282. The government and Mr. Craig entered into a series of tolling agreements in this case that excluded a total of 190 days from any calculation of time under the statute of limitations. The statute of limitations therefore bars prosecution for alleged offenses committed prior to October 3, 2013. The tolling agreements had no effect on defense arguments based on periods of limitation that already had expired before the "tolled period." *See, e.g.*, Ex. 22 ¶ 1 (first tolling agreement).

plot." *Toussie*, 397 U.S. at 122. But the Supreme Court has cautioned that "the doctrine of continuing offenses should be applied in only limited circumstances." *Toussie*, 397 U.S. at 115. Specifically, a crime is not a continuing offense "unless the explicit language of the substantive criminal statute compels such a conclusion, or the nature of the crime involved is such that Congress must assuredly have intended that it be treated as a continuing one." *Id.*

Almost every court to consider whether 18 U.S.C. § 1001(a)(1) falls within *Toussie*'s "continuing offense" exception has concluded that it does not. *See Dunne*, 324 F.3d at 1164–66; *United States v. Treacy*, Criminal Action No. 5:13cr00018, 2014 WL 12698499, at *2–6 (W.D. Va. Jan. 28, 2014); *United States v. Mubayyid*, 567 F. Supp. 2d 223, 239–42 (D. Mass. 2008), *aff'd in part, rev'd in part on other grounds*, 658 F.3d 35 (1st Cir. 2011); *United States v. Gremillion-Stovall*, 397 F. Supp. 2d 798, 800–02 (M.D. La. 2005).[19] These cases correctly explain that § 1001(a)(1) does not fall within either of the two narrowly circumscribed categories of continuing offenses that *Toussie* described. First, "[n]othing in the explicit language of § 1001 'compels' the conclusion that an offense committed thereunder is to be considered a continuing one." *Dunne*, 324 F.3d at 1164. Second, none of the three separate crimes defined in § 1001 "clearly contemplate[s] a prolonged course of conduct." *Id.* at 1165 (quoting *Toussie*, 397 U.S. at 120). While scheme offenses under § 1001(a)(1) can continue over time as a factual matter in particular cases, "there is nothing about the nature of the crime itself to indicate that Congress 'assuredly intended' to make the 'scheme' component of § 1001 a continuing offense."

[19] We are aware of one exception: *United States v. Menendez*, 137 F. Supp. 3d 688, 698–700 (D.N.J. 2015), *aff'd* 831 F.3d 155 (3d Cir. 2016). In that case, although the court did not expressly determine that 18 U.S.C. § 1001(a)(1) contemplates a continuing offense, it allowed a prosecution to proceed under § 1001(a)(1) and for otherwise time-barred conduct to be presented as evidence because the charged scheme encompassed acts within the limitations period. *Id.* at 699–700. The *Menendez* court did not discuss *Toussie* or engage in the statutory analysis that *Toussie* requires.

Mubayyid, 567 F. Supp. 2d at 241. Moreover, § 1001(a)(1) refers not only to falsification or concealment by "scheme," but rather "by trick, scheme, or device," and those terms, grouped together by Congress, do not suggest a continuing offense.[20]

Because § 1001(a)(1) is not a continuing offense, the statute of limitations begins to run as soon as a prosecution based on the charged scheme "could have been 'brought and proved.'" *Gremillion-Stovall*, 397 F. Supp. 2d at 802; *Treacy*, 2014 WL 12698499, at *3 (same); *see also United States v. Grenier*, 513 F.3d 632, 639 (6th Cir. 2008) (explaining that a scheme prosecution can be brought once acts "constituting" the scheme have occurred); *United States v. Heacock*, 31 F.3d 249, 256 (5th Cir. 1994) (same). When conduct that could have been prosecuted before the limitations date is charged as part of a "scheme" count under § 1001(a)(1), courts dismiss the count to the extent that it relies on the pre-limitations conduct. *See Grenier*, 513 F.3d at 639 (dismissing in full); *Dunne*, 324 F.3d at 1164 (same); *Treacy*, 2014 WL 12698499, at *8 (same); *Gremillion-Stovall*, 397 F. Supp. 2d at 802 (dismissing in part); *cf. United States v. Mubayyid*, 567 F. Supp. 2d at 242 ("[T]he government must prove that [the defendant] committed the crime charged under § 1001(a)(1) at some point after [the limitations date].").

[20] The statutory history of § 1001(a)(1) also precludes reading it to codify a continuing offense. Congress amended § 1001 as a whole in 1996 specifically to override certain judicial limitations with which it disagreed. *See* The False Statements Accountability Act of 1996, Pub. L. No. 104-292, H.R. 3166 (Oct. 11, 1996). Congress was legislating against the backdrop of the Supreme Court's decision in *Toussie*, and if it had intended to satisfy *Toussie*'s clear-statement rule for continuing offenses, it could have enacted language to that effect in § 1001. It did not do so. In *Toussie* itself, the Court noted that Congress "ha[d] legislated several times" to amend the crime at issue without addressing whether it was a continuing offense, "and since we are reluctant to imply a continuing offense except in limited circumstances, we conclude that any argument based on congressional silence is stronger in favor of not construing this Act as incorporating a continuing offense theory." 397 U.S. at 119–20.

In this case, all of the alleged conduct that precedes the limitations date of October 3, 2013, could have been charged as a scheme prior to that date, and therefore it is now time-barred. Count One charges a scheme that straddles the limitations date, spanning "[f]rom on or about June 3, 2013, to on or about January 16, 2014." Indictment ¶ 48. But the conduct between June 3, 2013, and October 3, 2013, could just as easily have been charged as a completed scheme offense, with the exact same alleged purpose ("to avoid registration as an agent of Ukraine," *id.* ¶ 49), and the exact same alleged manner and means (withholding information from other Skadden lawyers, *id.* ¶ 50.a, drafting false and misleading descriptions of media contacts for distribution within Skadden and to the FARA Unit, *id.* ¶ 50.b, and omitting material facts in communications with the FARA Unit, *id.* ¶ 50.c). Therefore, accepting for the sake of argument that Count One states a scheme offense at all, *see* note 17 *supra*, every essential element of that scheme could have been charged based on conduct that occurred prior to October 3, 2013.

Because the scheme charged in Count One could have been "brought and proved" before the limitations date based only on conduct preceding that date, the statute of limitations began to run, and all of the pre-limitations conduct is time-barred. Count One must be dismissed to the extent that it relies on statements made or other conduct that occurred before October 3, 2013.

B. The D.C. Circuit's 1956 decision in *Bramblett* did not permit a scheme to be prosecuted based on time-barred conduct, and to the extent it could be read to do so, *Bramblett* has been overruled by the Supreme Court's subsequent decision in *Toussie*.

In *Bramblett v. United States*, 231 F.2d 489 (D.C. Cir. 1956), the Court of Appeals affirmed a scheme conviction under 18 U.S.C. § 1001. The scheme involved a member of Congress who falsely stated to the Disbursing Office of the House of Representatives that a clerk was to be employed in his office, and then collected monthly payments issued to the phantom clerk for seven months, converting the payments to his own use. *Id*. at 490–93. The indictment

charged seven counts, one reflecting each of the seven months, with each count alleging that the defendant falsified the "material fact" that the clerk was eligible for payment in the relevant month. *Id.* at 491. Although the seven months in which the defendant collected payments all fell within the limitations period, the form that he had previously submitted to the Disbursing Office did not. *Id.* at 490–91. The defendant argued that "the crime was complete" at the time he submitted the form, and that the charged offenses were therefore time-barred. *Id.* The court rejected that argument, reasoning that, because the falsified "material facts" in each of the counts related to the clerk's eligibility for payment during specific months, the charged offenses could not have been complete until the months at issue. *Id.* at 491; *see also id.* at 493 (identifying "the use made of the form after it was filed" as an essential component of the crime).

Although *Bramblett* referred to the "continuing crime of falsification by a scheme," *id.* at 491, it did not hold that schemes under § 1001(a)(1) are true "continuing offenses" in the sense that they can be based on otherwise time-barred conduct that constituted a completed offense so long as the defendant committed additional acts in furtherance of the alleged scheme within the limitations period. *See id.* An essential premise of *Bramblett* was that "the particular crime charged" was *not* complete when the false form was submitted, but only later when the defendant collected payment. *See id.* Indeed, each of the seven counts in *Bramblett* was confined *only* to times within the limitations period, as is clear in the indictment in that case (which was appended to the defendant's brief on appeal). *See* Ex. 23 at 2–3 (charging, for example, that the offense in count one was committed "on or about June 30, 1950"—the date of the first monthly payment). The indictment referenced the submission of the false form as a background allegation, but it did not assert that the submission of the form was a basis on which the jury could return a guilty verdict on any of the seven charged offenses. *See id.* at 2–6.

To the extent that *Bramblett* might be read to hold that a scheme alleged under § 1001(a)(1) is a continuing offense, it has been overruled by *Toussie* and overtaken by the substantive amendments to 18 U.S.C. § 1001 that did not redefine §1001(a)(1) as a continuing offense under the standard laid out in *Toussie*. *See Treacy*, 2014 WL 12698499, at *3 n.3 ("Without the benefit of [*Toussie*], *Bramblett* is of little persuasive value" in determining whether a falsification by scheme under § 1001(a)(1) is a continuing offense); *Mubayyid*, 567 F. Supp. 2d at 242 ("*Bramblett* was decided long before the Supreme Court's decision in *Toussie*, and is hardly persuasive authority as to the interpretation of § 1001 under that case."); *Gremillion-Stovall*, 397 F. Supp. 2d at 802 ("*Bramblett* was decided before *Toussie* and, therefore, does not contain the analysis mandated by the Court in that case" for identifying continuing offenses.).

The court in *Bramblett* separately held that the "scheme" clause of 18 U.S.C. § 1001 contemplates multiple acts of falsification and concealment being charged in a single count, 231 F.2d at 491, a holding that doubtless remains good law. *See United States v. Hubbell*, 177 F.3d 11, 14 (D.C. Cir. 1999) (invoking *Bramblett* to reject argument that indictment was "duplicitous" by virtue of "includ[ing] too many allegations of falsifications and concealments" in a single count). But the fact that multiple acts can be charged together in a single count as a "scheme" does not mean that the government can use § 1001(a)(1) to revive conduct that constituted a completed offense before the end of the applicable limitations period. *See United States v. Sunia*, 643 F. Supp. 2d 51, 72 (D.D.C. 2009) (granting motion to dismiss count to the extent that it relied on time-barred conduct and "reject[ing] the government's contention that offenses committed outside the five-year statute of limitations should be deemed to have occurred within

the permitted time period so long as they are part of a larger pattern or scheme that straddles the statutory deadline.").

This case involves a "scheme" charge based in part on alleged conduct that occurred before the expiration of the limitations period and that could have been prosecuted at an earlier time. Because the statute of limitations began to run with respect to that conduct before October 3, 2013, the conduct is time-barred, and it cannot be the basis for the jury's verdict on Count One. This Court should therefore dismiss Count One because it relies on alleged statements made or conduct occurring before October 3, 2013.[21] Such a ruling would force the government to rely solely on the oral statements made during the October 9, 2013 meeting (for which it no longer has any notes, and has no witness who recalls with precision what Mr. Craig said) and the written statements contained in the October 11, 2013 letter summarizing that meeting (that the evidence will show were all true).

[21] The government may be able to introduce *evidence* of conduct that precedes the limitations period, but such conduct cannot be charged as part of the offense itself. *See Sunia*, 643 F. Supp. 2d at 72 & n.4 ("[E]vidence of prior acts . . . by the defendants might be admissible into evidence against the defendants, but . . . the alleged prior acts are not indictable offenses (or components of a consolidated charge in the indictment) in their own right.").

CONCLUSION

Count One of the Indictment should be dismissed under Federal Rule of Criminal Procedure 12(b)(3)(A)(v) and (B)(v). For all of the reasons stated herein, Count One is flawed on multiple grounds, and it fails to state an offense as a matter of law.

Dated: May 10, 2019

Respectfully submitted,

/s/ William W. Taylor, III

William W. Taylor, III (D.C. Bar No. 84194)
Ezra B. Marcus (D.C. Bar No. 252685)
ZUCKERMAN SPAEDER LLP
1800 M Street N.W. Suite 1000
Washington, D.C. 20036
Tel: (202) 778-1800
Fax: (202) 822-8106
Email: wtaylor@zuckerman.com
Email: emarcus@zuckerman.com

William J. Murphy (D.C. Bar No. 350371)
Adam B. Abelson (D.C. Bar No. 1011291)
ZUCKERMAN SPAEDER LLP
100 East Pratt Street, Suite 2440
Baltimore, MD 21202
Tel: (410) 332-0444
Fax: (410) 659-0436
Email: wmurphy@zuckerman.com
Email: aabelson@zuckerman.com

Attorneys for Defendant Gregory B. Craig

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on May 10, 2019, the foregoing was served on counsel of record via the Court's CM/ECF Service.

/s/ Ezra B. Marcus
Ezra B. Marcus

Exhibit

1

From: Craig, Gregory B (WAS)
Sent: Tuesday, April 17, 2012 6:32 PM
To: Sloan, Cliff (WAS)
Subject: Re: FARA issues

Good advice

From: Sloan, Cliff (WAS)
Sent: Tuesday, April 17, 2012 12:30 PM
To: Kedem, Allon (WAS)
Cc: Craig, Gregory B (WAS)
Subject: RE: FARA issues

Thanks very much, Allon. Greg -- I think our engagement should not include PR advice. Manafort or Schoen or somebody else can hire the PR team and manage that. I say this for two reasons. First, it will create a FARA problem. Second, I actually think it's much better for our representation to be "rule of law" advisers, not "rule of law"-and-PR advisers. Including a PR component as part of our representation has the potential to undermine our work. We're in this representation as lawyers, not spin doctors, and I think it's important that we be able to say that. In any event, the FARA issue looks insurmountable. (And, of course, we can provide information and answer questions for the PR firm, at the client's direction.

Cliff Sloan
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W. | Washington | D.C. | 20005-2111
T: 202.371.7040 | F: 202.661.8340
cliff.sloan@skadden.com

Skadden

From: Kedem, Allon (WAS)
Sent: Tuesday, April 17, 2012 12:26 PM
To: Sloan, Cliff (WAS)
Cc: Craig, Gregory B (WAS)
Subject: RE: FARA issues

I spoke with Ken, who seems to have a lot of FARA expertise. In his view, our work writing a report evaluating the Ukrainian proceedings would not trigger FARA obligations. However, if we were to perform public relations work aimed at the US, if our London lawyers were to do so, or if we were to subcontract with a PR firm to do so, then we would be obligated to register under FARA. (If the Ukrainian Government were to hire the PR firm directly, then FARA would not come into play for us.)

Ken also noted that registering under FARA requires public disclosure of our engagement with the client. Therefore, if we do intend to perform services that would subject us to FARA, we should consider that fact when drafting our engagement letter.

Allon Kedem
Associate
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W. | Washington | D.C. | 20005-2111
T: 202.371.7273 | F: 202.661.8273
allon.kedem@skadden.com
Admitted in New York only

From: Sloan, Cliff (WAS)
Sent: Tuesday, April 17, 2012 8:22 AM
To: Kedem, Allon (WAS)
Subject: FW: FARA issues

Allon -- Ken Gross may give you a call. I left a message with Ken because (I think) he's our resident FARA (Foreign Agent Registration Act) guru. (As you may know, FARA requires registration as a foreign agent if one works for a foreign government by attempting to affect US government policy. We want to be sure to structure our representation of Ukraine so that we are not foreign agents). One issue that has come up, as noted below, is retention of a PR firm, which presumably would reach out to western press, including both US and European press (and also our own efforts). One point Greg has asked is whether it matters if this is done by our London lawyers, rather than US lawyers.

Cliff Sloan
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W. | Washington | D.C. | 20005-2111
T: 202.371.7040 | F: 202.661.8340
cliff.sloan@skadden.com

Skadden

From: Van Der Zwaan, Alex (LON)
Sent: Monday, April 16, 2012 7:36 PM
To: Project Kyiv DL
Cc: Loucks, Michael K (BOS)
Subject: FARA issues

Dear Greg, dear Cliff,

Have you been able to make any headway in relation to the FARA analysis which we discussed last week? I am mindful that the clients view one of the aims of both Project 1 and 2 as improved PR on the issue of Ukraine's conduct in relation to Yulia Tymoshenko and her trial. To the extent that is the case and we are able to help them with this from a FARA perspective, we ought to consider getting appropriate PR advisors engaged in this process as soon as possible in order to maximise the effect of the suggestions we are making.

Matt and I have thought of some companies which we could use, and could begin to reach out to these people, subject to your views on the FARA issues, as well as any other clearance which we may need from Manafort or otherwise.

Alex

Alex R. van der Zwaan
Associate
Skadden, Arps, Slate, Meagher & Flom (UK) LLP
40 Bank Street | Canary Wharf | London | E14 5DS
T: +44.20 7519 7361 | F: +44.20.7519.7070
alex.vanderzwaan@skadden.com

Exhibit 2

THE TYMOSHENKO CASE

SKADDEN ARPS SLATE MEAGHER & FLOM LLP

SEPTEMBER 2012

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Executive Summary

In 2011, former Ukrainian Prime Minister Yulia Tymoshenko was tried and convicted of abusing her official powers and causing grave damage. This Report examines the events leading up to and including her prosecution and trial, and analyzes those events applying Western standards of due process and the rule of law. The Report identifies and discusses the major factual and legal disputes involved in the case. The Report has been written based on a review of original documents, trial transcripts, and interviews with those who participated in the process, which reflect the following conclusions:

Factual Conclusions

- The economy of Ukraine is deeply dependent on natural gas, most of which it purchases from Russia. At the same time, Russia relies on Ukraine to facilitate the transit of its gas to Europe. The two nations have a long history of disputes over the purchase price for gas (paid to Russia) and the transit price (paid to Ukraine). *Pgs. 10-13.*
- In late 2008, Tymoshenko and other members of the Ukrainian government negotiated with their Russian counterparts over a market-based approach to pricing. The parties failed to reach an agreement before their prior contract expired on December 31. *Pgs. 14-20.*
- Beginning in early January 2009, Russia cut off the flow of gas into Ukraine, which threatened the Ukrainian economy, as well as European nations dependent on the flow of Russian gas across Ukraine. *Pgs. 21-24.*
- On January 17, 2009, Tymoshenko met with Vladimir Putin (then Russia's Prime Minister), after which they announced that a deal to end the standoff had been reached. The precise terms of the agreement between Tymoshenko and Putin were not disclosed at that time. *Pgs. 25, 47-48.*
- Tymoshenko arranged for the preparation of a document—entitled "The Directives"—which she signed and which set forth the major elements of her agreement with Putin. *Pgs. 28-30.*
- On January 19, Tymoshenko's deputy (Oleksandr Turchinov) convened a meeting of Ukraine's Cabinet of Ministers to provide information and seek support for the terms that Tymoshenko had negotiated with Putin as they appeared in the Directives. Whether Tymoshenko and Turchinov intended to obtain a vote of approval from the Cabinet, or whether instead they sought merely to inform the Cabinet about the progress of negotiations and to ask generally for the Cabinet's support, is a subject of dispute. It is clear, however, that the Cabinet of Ministers did not vote on the proposal. *Pgs. 26-27, 50-57.*
- Also on January 19, Tymoshenko traveled to Moscow where she met Oleh Dubyna, the head of Naftogaz, Ukraine's state-owned energy company. In the House of the Government of the Russian Federation in the Kremlin, Tymoshenko again met with Putin one-on-one. She emerged from that meeting and informed

Dubyna that he would participate in a press conference at which the parties would sign an agreement that embodied the terms that she had negotiated with Putin. Dubyna insisted on receiving a writing from the Prime Minister before he would sign the agreement. *Pgs. 27-29, 57-59.*

- Tymoshenko produced an official looking document with her signature. The official seal of the Cabinet of Ministers appeared on the document. The document discussed the deal and laid out some of the terms of the proposed agreement that she had negotiated with Putin. Several facets of this incident are in dispute, including to whom Tymoshenko handed the document, what she did or did not say, and the legal effect of the document. What is clear is that Tymoshenko used the document to facilitate Naftogaz's agreement with Gazprom according to the terms that she had negotiated. *Pgs. 28-30, 62-66.*
- Following receipt of the document, Dubyna and his deputy signed 10-year agreements on behalf of Naftogaz with Gazprom, Russia's state-owned energy company. These contracts included:
    - *Gas Price*: For the first quarter of 2009, Naftogaz agreed to pay Gazprom $360 per thousand cubic meters (kcm) of gas purchased. Thereafter, the price was set by a formula, one input of which was the average market price paid by other European nations. During the first-year of the contract (*i.e.*, 2009), the formula price included a 20 percent discount. *Pgs. 31-32.*
    - *Transit Price*: For 2009, Gazprom agreed to pay Naftogaz $1.7/kcm for every 100 kilometers of gas transported across Ukraine. After that, the price was to be determined by a formula that adjusts the current year's transit price based on (among other things) the prior year's price and inflation. *Pg. 32-33.*
- The average price paid by Naftogaz in 2009 for the purchase of gas was $232.98/kcm. The prior year, Ukraine had paid $179.50/kcm. The 2009 transit price of $1.7 was the same as the prior year's transit price. *Pgs. 33, 72.*
- In 2009, Naftogaz used 3.639 billion cubic meters of gas to facilitate the transit of Russian gas to Europe. The prosecution contends that the increase in price between 2008 and 2009 made this gas $194,625,386.70 more expensive. *Pgs. 72-74.*
- Tymoshenko was tried and convicted for her role in bringing about the January 19 agreement. The Court concluded that Tymoshenko had exceeded her authority by approving an agreement that violated existing Ukrainian law; by directing Dubyna to sign the agreement without the approval of Ukraine's Cabinet of Ministers; and by deceiving Dubyna into thinking that the Cabinet had already approved the agreement when in reality it had not. The Court also concluded that her conduct caused grave damage to the State of Ukraine. *Pgs. 37, 45-46, 67-81.*

Conclusions Regarding Tymoshenko's Trial

- *The Court's Opinion:* Although many facts were in sharp dispute at the trial and conflicting evidence was offered on many issues, the Court, as the finder of fact,

based its findings on evidence before the court and, in some instances, on inferences that the Court drew from that evidence. Among other things, the Court found that Tymoshenko overstepped her authority by drafting Directives that set forth the terms that she and Putin had agreed to; by ordering the head of Naftogaz to sign an agreement with Gazprom in the absence of approval from the Cabinet of Ministers; by threatening to fire the head of Naftogaz if he did not sign the agreement; and by deceiving him into believing that the Cabinet had approved the agreement. *Pgs. 45-81.*

- *Opportunity to Prepare a Defense*: Tymoshenko raises concerns about the opportunity she and her attorney had to prepare adequately for her defense. She claims (1) she had insufficient time to review the 4000-page case file; and (2) she had insufficient time to prepare for trial. On both issues, the facts are in dispute. In the United States, trial courts have considerable discretion to manage criminal proceedings. We believe that, looking at this case, most American trial courts would have given the defendant more time to prepare her defense. It is unlikely, however, that based on this record, an American appellate court would find a due process violation and reverse the conviction—unless there were evidence to support Tymoshenko's allegation that the prosecution intentionally disrupted her preparations and distracted her during the time immediately preceding the trial. Other than her allegations, we are unaware of any such evidence. *Pgs. 82-94.*

- *Selection of the Judge*: Tymoshenko claims that Judge Kireyev's selection as trial judge compromised her right to an independent and impartial trial. She alleges that Judge Kireyev was deliberately selected by President Yanukovych, that he lacked adequate experience and impartiality, and that he improperly ruled on motions for his own disqualification. Tymoshenko's objections fail to raise significant fairness concerns on the record in this case, and the evidentiary record does not support her claim of personal bias. She has not established that Judge Kireyev's experience, tenure, or selection violated Western standards of fairness. *Pgs. 94-106.*

- *Jury Request*: Prior to trial, Tymoshenko requested to be tried in front of a jury. Her request was denied, and she was tried instead by a judge. We do not find that the lack of a jury trial violated due process. Under Western standards, juries are not necessarily essential to a fair trial. They have yet to be used in Ukraine, and Tymoshenko was treated no differently in this regard from other defendants. It should be noted, however, that the implementation of jury trials, as promised in the Ukrainian Constitution, will greatly contribute to the protection of liberty and to the promotion of fairness in Ukraine. Such a reform would go far to improve the quality of justice in Ukraine. *Pgs. 106-09.*

- *Tymoshenko's Courtroom Behavior*: From the very start, Tymoshenko and her defense team challenged the legitimacy of the criminal proceedings against her, alleging that the prosecution was motivated by politics, corruption, and greed. Throughout the trial, the defendant refused to acknowledge the Court's legitimacy and engaged in conduct that was disrespectful to the Court. Such conduct included insulting the Judge and repeatedly accusing him of improper motives;

failing to stand when addressing the Judge (as required under Ukrainian law); harassing adverse witnesses; filing duplicative motions; and making frivolous arguments. These tactics made management of the trial substantially more difficult. *Pgs. 109-12.*

- *Removal from the Courtroom*: Judge Kireyev ordered Tymoshenko removed from the courtroom during the trial on two occasions—July 6 and July 15, 2011. The July 6 removal does not raise serious fairness concerns: Tymoshenko was repeatedly warned that her actions were disruptive and violated the Criminal Procedure Code; no witnesses testified in her absence; and her defense counsel remained present in her absence. Tymoshenko's July 15 removal is more troubling, because no member of her defense team was present in her absence. However, the only evidence admitted during that period was a document to which an objection could later have been made. Neither she nor her counsel raised any objection to the admission of the document, and it does not appear that she suffered any prejudice as a result of the absence. *Pgs. 109-22.*

- *Detention*: Tymoshenko claims that the Court's decision to incarcerate her in a detention facility—beginning on August 5 and continuing through her sentencing—was an open-ended detention unjustified by the facts. Tymoshenko's courtroom behavior would likely have merited a summary contempt finding under Western standards. The Court's separate suggestion that she presented a flight risk is problematic, however, on the record of this case. Taking steps to maintain order in the Courtroom is justifiable. Using detention to achieve that objective, as the Court did in this case, is an accepted but rarely used practice in Western courts. Under Western standards, we find that the decision to detain Tymoshenko for the entire balance of her trial and after the trial had concluded—until sentencing—without adequate justification or review raises concerns about whether she was inappropriately deprived of her liberty prior to her conviction. *Pgs. 122-43.*

- *Representation by Counsel*: Tymoshenko argues that the Court violated her right to adequate representation by examining witnesses in the absence of defense counsel and by failing to adjourn the proceedings to allow her to acquire new legal representation. Ukrainian law, as well as Western legal standards, requires that a defendant who wishes to be represented by counsel during trial must be able to exercise that right. Under Western standards, the continued examination of witnesses without representation by counsel would almost certainly be viewed as a violation of the right to assistance of counsel. *Pgs. 143-61.*

- *Presentation of Defense*: During the investigation stage of the proceeding, Tymoshenko identified a large number of witnesses that she asked to be interviewed. Her request was found to be untimely, and the Chief Investigator denied her request. During the trial, she identified other witnesses and asked that they be permitted to testify. Judge Kireyev refused to permit all but two of these witnesses to testify. Tymoshenko argues that Judge Kireyev's refusal undermined her ability to present her defense. Under Western standards of fairness, we believe that the Court's decision not to call certain defense witnesses compromised Tymoshenko's ability to present a defense. *Pgs. 161-75.*

- *Selective Prosecution*: Tymoshenko has alleged that her prosecution was a politically motivated reprisal undertaken in order to silence a political opponent of the ruling regime. The prosecution of a former head of government, unsuccessful presidential candidate, and leader of the opposition merits close scrutiny in all respects. In this report, we do not opine about whether the prosecution was politically motivated or driven by an improper political objective—*i.e.*, to remove her from political life in Ukraine in the future. Instead, based on the record of the case and established precedent, we do address the narrow doctrine of "selective prosecution." Based on our review of the record, we do not believe that Tymoshenko has provided specific evidence of political motivation that would be sufficient to overturn her conviction under American standards. *Pgs. 175-84.*
- *Adequacy of Charges under Ukrainian Law*: The parties dispute whether the facts found by the Court establish Tymoshenko's guilt regarding the offense as a matter of Ukrainian law. This issue of Ukrainian law—the requirements necessary to satisfy the elements of the statutory offense—is beyond the scope of our assignment and beyond our expertise.

Exhibit

3

U.S. Department of Justice

National Security Division

Washington, DC 20530

DEC 18 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Earle Yaffa, Managing Director
Skadden, Arps, Slate, Meagher & Flom LLP
4 Times Square
New York, NY 10036

Re: Possible Obligation to Register Pursuant to the Foreign Agents Registration Act

Dear Mr. Yaffa:

It has come to our attention from a December 13, 2012 Los Angeles Times article, http://www.latimes.com/news/world/worldnow/la-fg-wn-trial-ukraine-tymoshenko-20121213,0,3141156.story, titled "Ukraine lawmakers brawl; report finds Tymoshenko trial flawed" that your firm may be engaged in activities on behalf of the Ministry of Justice of the Government of Ukraine, which may require registration pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (FARA or the Act).

In order that we may determine whether your organization is required to register under FARA, please provide this office with (1) a complete statement of the ownership and control of the firm, (2) a description of the nature of the firm's regular business and/or activity, (3) a description of the activities the firm has engaged in or the services it has rendered to the Ministry of Justice of the Government of Ukraine or any other foreign entity and (4) a copy of the existing or proposed written agreement, if any, or a full description of the terms and conditions of each existing or proposed oral agreement, if any, the firm may have with the Ministry of Justice of the Government of Ukraine or any other foreign entity.

Enclosed is a copy of the Act and the rules thereunder. If you have any questions, please contact Alex Mudd at 202-233-2271. We look forward to your prompt and thorough response to our inquiry.

Sincerely

Heather H. Hunt
Registration Unit
Counterespionage Section
National Security Division

Enclosures

Exhibit 4

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000
FAX: (202) 393-5760
www.skadden.com

FIRM/AFFILIATE OFFICES
BOSTON
CHICAGO
HOUSTON
LOS ANGELES
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WILMINGTON
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SHANGHAI
SINGAPORE
SYDNEY
TOKYO
TORONTO
VIENNA

DIRECT DIAL
(202) 371-7400
DIRECT FAX
(202) 661-9100
EMAIL ADDRESS
GREGORY.CRAIG@SKADDEN.COM

February 6, 2013

Ms. Helen Hunt
United States Department of Justice
National Security Division
Washington, DC 20530

Dear Ms. Hunt:

I am writing to respond to your letter to Earle Yaffa, dated December 18, 2012, as follows:

1. A complete statement of the ownership and control of the Firm. Skadden is a Delaware limited liability partnership that is owned and controlled by its 415 partners worldwide.

2. A description of the Firm's regular business and/or activity. With 23 offices, approximately 1,800 attorneys and more than 40 distinct areas of practice, Skadden and affiliates serves clients in every major international financial center, providing legal advice to companies across a spectrum of industries.

Affiliated entities include:
Skadden, Arps, Slate, Meagher & Flom (UK) LLP (London office)
Skadden, Arps, Slate, Meagher & Flom (Europe) LLP (Vienna office)
Thurcom Limited (related to the London office practice of law)
Skadden, Arps, Slate, Meagher & Flom Limited (related to the London office practice of law)
Skadden, Arps, Slate, Meagher & Flom (Hong Kong, Sydney and Singapore offices)
Skadden, Arps, Slate, Meagher & Flom Consultoria Empresarial Ltda. (Brazil Office)

Skadden, Arps, Slate, Meagher & Flom Estrangeiro/Direito Norte Americano (Brazil office)
SABR Holdings LLC (Brazil Office)
Skadden Arps Law Office (Tokyo office)
BECS Holding Company LLC (100% owned by Skadden, Arps, Slate, Meagher & Flom LLP)
JSBB Holding Company LLC (100% owned by Skadden, Arps, Slate, Meagher & Flom LLP

3. A description of the activities the Firm has engaged in or the services it has rendered to the Ministry of Justice of the Government of Ukraine or any other foreign entity relating to such services. In April 2012, the Ministry of Justice for the Government of Ukraine asked the Firm to serve as consultant on rule of law issues and to provide advice about the question of Ukraine's criminal justice system as viewed through the prism of western standards of due process, and, in particular, to advise the Ministry about rule-of-law issues that might arise before the European Court for Human Rights. A major focus of the assignment was to conduct an independent inquiry into the facts and circumstances surrounding the prosecution, trial, conviction and sentencing of former Prime Minister Yulia Tymoshenko and to write a report of the Firm's findings in light of western standards of due process. The Firm insisted on complete independence and total access to relevant individuals and evidence in connection with our work. As an explicit component of our assignment from the very beginning, Skadden's work was conditioned on the understanding with the client that the Firm would not provide any services that would be covered by the Foreign Agent Registration Act ("FARA") or would require registration under FARA. The Firm completed its investigative work in September 2012, and delivered its report to the Ministry in December 2012.

4. Attached you will find (a) a written agreement in Ukrainian and English dated April 10, 2012; and (b) a proposed written agreement in English dated April 10, 2012. In the proposed English language written agreement described in (b), the parties addressed the issue of FARA activity directly: "It is understood that the Firm is not being retained to engage in any 'political activities' – and will not engage in any such activities – as defined in the Foreign Agent Registration Act (FARA)." Both Skadden and the client understood and accepted this explicit limitation on the scope of the Firm's engagement. The client declined to sign the proposed English agreement because of concerns about the confidentiality clause. The fact that the Firm's work for the client would not include any activities within the scope of FARA remained nonetheless an explicit condition of the Firm's engagement.

In addition to these agreements, there have been discussions with the Government of Ukraine about the possibility of Skadden receiving additional compensation from the Government for the Firm's work. The most recent correspondence on this subject is attached as (c) and (d)

Lastly, there was an oral agreement with a private citizen of Ukraine in which that individual agreed to contribute funds to help pay for the work described above. There was nothing in the oral agreement with the private citizen that was inconsistent with the terms of the other agreements. To the contrary, the private citizen clearly understood that the Firm would conduct an independent inquiry and write a report, and that the Firm would not engage in any 'political activities' as defined in the Foreign Agent Registration Act.

Please let us know if you have any questions or we can be of further assistance.

Sincerely yours,

Gregory B. Craig

ATTACHMENT A

Agreement in Ukrainian and English dated April 10, 2012

ДОГОВІР

м. Київ

«10» April 2012р.

Міністерство юстиції України в особі заступника Міністра юстиції – керівника апарату Сєдова Андрія Юрійовича, що діє на підставі Положення про Міністерство юстиції України, затвердженого Указом Президента України від 6 квітня 2011 року № 395/2011 (далі – Замовник), з однієї сторони,

та

Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates (далі – Виконавець), з іншої сторони, разом – Сторони,

уклали цей договір про таке (далі – Договір):

1. Предмет Договору

1.1. Виконавець зобов'язується у 2012 році надати Замовникові послуги з дослідження у галузі права (ДК 016:97 - 73.20.13), а саме експертного дослідження щодо дотримання принципу верховенства права (далі – Послуги), (далі – Послуги), а Замовник – прийняти і оплатити такі Послуги.

1.2. Обсяги закупівлі послуг здійснюються залежно від реального фінансування видатків та потреб замовника.

2. Якість послуг

2.1. Виконавець повинен надати Замовнику послуги, якість яких відповідає умовам:

- результат дослідження повинен у повному обсязі та об'єктивно відображати Європейські та Американські стандарти та практику щодо дотримання принципу Верховенства права;
- дослідження здійснюється з урахуванням особливостей конкретної справи, яка розглядається Європейським судом з прав людини.

3. Ціна Договору

3.1. Ціна цього Договору становить

CONTRACT

Kyiv

«10» April 2012р.

The Ministry of Justice of Ukraine acting on the basis of the Regulation on the Ministry of Justice of Ukraine approved by the Decree of the President of Ukraine of April 6, 2011 No 396/2011, represented by Andriy Yuriyovych Sedov (hereinafter referred to as **the Employer**), on one hand

and

Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates (hereinafter referred to as **the Executor**), on the other hand,

hereinafter jointly referred to as **the Parties**,

have concluded the following Contract (hereinafter referred to as **the Contract**):

1. Subject of the Contract

1.1. In 2012, the Executor shall deliver services on legal studies (ДК 016:97 - 73.20.13) to the Employer that include providing advice on the rule of law (hereinafter referred to as **the Services**), and the Employer shall accept and pay for such Services.

1.2. The scope of procurement of the Services shall be made depending on actual funding of the Employer's expenses and needs.

2. Quality of the Services

2.1. The Executor shall provide the Employer with the Services whose quality is to meet the following conditions:

- findings of the study must fully and objectively reflect European and American standards and practice with respect to rule of law;
- the study is to be carried out with regard to specific features of the particular case considered before the European Court of Human Rights.

3. Price of the Contract

3.1. The price of the present Contract shall

95 000,00 грн. (дев'яносто п'ять тисяч грн. 00 коп.) без ПДВ.

3.2. Ціна послуг становить **100,00 грн.** (сто грн. 00 коп.) без ПДВ за одну годину дослідження. Загальна кількість годин дослідження не може перевищувати 950 (дев'ятсот п'ятдесят) годин.

3.3. Виконавець веде облік витраченого часу для здійснення дослідження. На основі цих даних Виконавець складає Звіт та направляє його Замовнику. Звіт має містити детальний опис послуг, на які витрачено час.

3.4. Ціна цього Договору може бути зменшена за взаємною згодою Сторін.

be 95,000.00 (ninety five thousand) Ukrainian hryvnyas, VAT excluded.

3.2. The price of the Services shall be **100.00** (one hundred.) Ukrainian hryvnyas, VAT excluded, per one hour of study. Total hours shall not exceed 950 (nine hundred fifty) hours.

3.3. The Executor shall keep accounting of hours expended to carry out the study. Based on those data, the Executor shall draw up the Report and submit it to the Employer. The Report shall contain the detailed description of the services time had been expended in.

3.4. The price of the present Contract may be reduced by mutual consent of the Parties.

4. Порядок здійснення оплати

4.1. Розрахунки проводяться шляхом перерахування Замовником коштів на розрахунковий рахунок Виконавця після пред'явлення Виконавцем рахунка на оплату послуг (далі – рахунок) за наявності коштів на розрахунковому рахунку Замовника.

4.2. Оплата за виконані послуги здійснюється після підписання акта прийому-передачі наданих послуг з відстрочкою платежу до 30 банківських днів.

4.3. Якщо Замовник порушує умови оплати, зазначені у п. 4.2., з причин затримки бюджетного фінансування, така затримка вважається викликаною форс-мажорними обставинами і не тягне за собою будь-якої відповідальності.

4. Payment procedure

4.1. The payment shall be made by the Employer by way of bank transfer to the bank account of the Executor upon presentation by the Executor of the bill for services (hereinafter referred to as **the bill**) subject to availability of the funds on the bank account of the Employer.

4.2. Payment for services shall be made after signing the statement of transfer and acceptance of the services delivered, with delay of payment up to 30 bank days.

4.3. In the case the Employer violates the payment conditions as referred to in § 4.2. due to delays in budget funding, such a delay shall be considered as one caused by force majeure circumstances and shall not entail liability of any kind.

5. Надання послуг

5.1. Строк надання послуг за цим Договором починається з ___ травня 2012 р. і має бути завершено до 31 грудня 2012 року згідно з порядком, наведеним нижче.

5.2. Замовник передає Виконавцеві копії матеріалів справи стосовно якої необхідно провести дослідження та яка знаходить на розгляді Європейського суду із переліком питань, які підлягають дослідженню.

5.3. Виконавець здійснює дослідження прецедентної практики Європейського суду з прав людини у справах щодо дотримання вимог Конвенції

5. Provision of services

5.1. The period of provision of services under the present Contract shall start from 22 May 2012 and shall end by 31 December 2012, in accordance with the procedure set out below.

5.2. The Employer shall submit to the Executor the copy of the case-file which is to be analysed and which is being considered before the European Court of Human Rights, together with the list of questions to be studied.

5.3. The Executor shall carry out the study of the case-law of the European Court of Human Rights concerning compliance with the requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms as

про захист прав людини і основоположних свобод, а також документів органів Ради Європи з урахування особливостей конкретної справи, яка знаходиться на розгляді Європейського суду.

5.4. За результатами дослідження Виконавець готує меморандум, в якому відображаються позиція Європейського суду чи органів Ради Європи щодо питань, які є предметом дослідження, а також висновки щодо можливості їх застосування для підготовки позиції Уряду України з огляду на обставини конкретної справи.

5.5. Передача Виконавцеві копій матеріалів справи, а також перелік питань, які необхідно дослідити оформлюється протоколом.

5.6. Виконавець здійснює дослідження упродовж строку, що не перевищує 1 (одного) місяця.

5.7. Замовник нараховує Виконавцеві штрафні санкції у розмірі вартості однієї години здійснення дослідження за кожен день порушення строку проведення дослідження, визначеного пунктом 5.6. Договору.

5.8. Місце надання послуг: Міністерство юстиції Україні, м. Київ, вул. Городецького, 13.

well as of the documents of the institutions of the Council of Europe with regard to specific features of the particular case being considered before the European Court of Human Rights.

5.4. In accordance with the findings, the Executor shall prepare the memorandum that is to reflect the position of the European Court of Human Rights or the institutions of the Council of Europe on issues studied; the Executor shall also draw up the conclusions on possibilities of their application in the process of drawing up the position of the Ukrainian Government taking into account circumstances of the particular case..

5.5. The submission of the copies of the case-file and of the list of questions to be studied to the Executor shall be formalised by means of the relevant record.

5.6. The Executor shall carry out the study within the period that is not to exceed 1 (one) month.

5.7. In the case of failure to meet a date, the Employer shall fine the Executor in the amount of cost of one hour per each day outside the time-limit for the study set out in § 5.6. of the Contract.

5.8. The Service location shall be the Ministry of Justice of Ukraine, City of Kyiv, 13 Horodetskogo St..

6. Права та обов'язки сторін

6.1. Замовник зобов'язаний:

6.1.1. Надати Виконавцеві копії матеріалів справи, а також перелік питань, які необхідно дослідити.

6.1.2. Приймати надані послуги згідно з актом прийому-передачі наданих послуг (якщо надані послуги відповідають умовам цього Договору).

6.1.3. Своєчасно та в повному обсязі сплачувати за надані послуги;

6.2. Замовник має право:

6.2.1. Контролювати надання послуг у строки, встановлені цим Договором. Здійснювати перевірку якості дослідження та відповідності дослідження вимогам, встановленим у п. 2.1.

6.2.2. Достроково розірвати Договір та вимагати відшкодування збитків у разі, якщо надання Виконавцем послуг у строк, передбачений цим договором, стає явно неможливим, або ж якщо під час надання послуг стане очевидним, що вони не будуть [illegible] або на

6. Rights and obligations of the Parties

6.1. The Employer shall:

6.1.1. Submit copies of case-files together with the list of questions to be studied to the Executor.

6.1.2. Accept the services made according to the statement of transfer and acceptance of the services delivered (if the services delivered comply with the conditions of the present Contract).

6.1.3. Pay for services delivered timely and in full;

6.2. The Employer shall have the right to:

6.2.1. Check that the services are provided within the time-limits established by the present Contract, verify the quality of the study and its compliance with the requirements set out in § 2.1.

6.2.2. Terminate ahead of schedule the present Contract and require payment of damage in the case if provision of services by the Executor within the time-limits established by the present Contract becomes clearly impossible or if during provision of the services it becomes quite clear that they are not going to be provided

відповідному рівні.

6.2.3. Зменшувати обсяг закупівлі надання послуг та загальну вартість цього Договору залежно від реального фінансування видатків. У такому разі Сторони вносять відповідні зміни до цього Договору;

6.2.4. Повернути рахунок Виконавцю без здійснення оплати в разі неналежного оформлення документів (відсутність печатки, підписів тощо).

6.3. Виконавець зобов'язаний:

6.3.1. Забезпечити надання послуг у строки, встановлені цим Договором;

6.3.2. Забезпечити надання послуг, якість яких відповідає умовам, встановленим розділом 2 цього Договору.

6.3.3. Надати Замовнику результат дослідження в електронному та друкованому вигляді, а також повернути копії матеріалів справи.

6.3.4. Не розголошувати відомості, що містяться у матеріалах справи, які йому було передано для здійснення дослідження.

6.3.5. Дотримуватися умов цього Договору і нести відповідальність за їх невиконання.

6.4. Виконавець має право:

6.4.1. Своєчасно та в повному обсязі отримувати плату за надані послуги;

6.4.2. На дострокове надання послуг за письмовим погодженням Замовника.

7. Відповідальність сторін

7.1. У разі невиконання або неналежного виконання своїх зобов'язань за Договором Сторони несуть відповідальність, передбачену цим Договором та чинним законодавством України.

8. Обставини непереборної сили

8.1. Сторони звільняються від відповідальності за невиконання або неналежне виконання зобов'язань за цим Договором у разі виникнення обставин непереборної сили, які не існували під час укладання Договору та виникли поза волею Сторін (аварія, катастрофа, стихійне лихо, епідемія, епізоотія, війна тощо).

8.2. Сторона, що не може виконувати зобов'язання за цим Договором внаслідок дії обставин непереборної сили, повинна не

properly or at the adequate level.

6.2.3. Reduce the scope of procurement of services and the price of the present Contract depending on actual funding of the expenses. In such an event the Parties shall make relevant amendments to the Contract;

6.2.4. Return the bill to the Executor without making payment in the case of improper drawing up of documents (absence of the seal, signatures etc.).

6.3. The Executor shall:

6.3.1. Provide services within the time-limits established by the present Contract;

6.3.2. Provide services whose quality complies with the requirements set out in Section 2 of the present Contract.

6.3.3. Provide the Employer with the findings of the study both in electronic and printed form and return the copies of the case-files.

6.3.4. Not make public information contained in the case-file submitted for the study.

6.3.5. Comply with the provisions of the present Contract and bear responsibility for failure to comply with them.

6.4. The Executor shall have the right to:

6.4.1. Receive payment for the services provided timely and in full;

6.4.2. Provide services ahead of time, upon the written consent of the Employer.

7. Responsibility of the Parties

7.1. In the case of failure to meet their obligations or in case of improper execution of their obligations under the present Contract, the Parties shall be held liable as provided for by the present Contract and by the Ukrainian legislation in force.

8. Force majeure

8.1. The Parties shall not be held liable for failure to meet their obligations or in the case of improper execution of their obligations under the present Contract in the case of emergence of force majeure circumstances that did not exist at the time of conclusion of the present Contract and have arisen beyond the control of the Parties (accident, crash, natural disaster, epidemics, epizootic outbreak, war etc.).

8.2. The Party that is unable to meet its obligations under the present Contract as result of force majeure circumstances, shall, no later than

пізніше ніж протягом семи днів з моменту їх виникнення повідомити про це іншу Сторону у письмовій формі.

8.3. Доказом виникнення обставин непереборної сили та строку їх дії є відповідні документи, що видані ТПП України, а також іншими уповноваженими державними органами.

8.4. У разі коли строк дії обставин непереборної сили продовжується більше ніж тридцять днів, кожна із Сторін в установленному порядку має право розірвати цей Договір.

within seven days from the moment of emergence thereof, notify the other Party in written form.

8.3. Relevant documents issued by the Ukrainian Chamber of Commerce and by the other competent bodies shall be the proof of force majeure circumstances and of the period they would persist.

8.4. In the case when force majeure circumstances continue over thirty days, any of the Parties may terminate the present Contract in accordance with the established procedure.

9. Вирішення спорів

9.1. У випадку виникнення спорів або розбіжностей Сторони зобов'язуються вирішувати їх шляхом взаємних переговорів та консультацій.

9. Dispute settlement

9.1. In the case of disputes or clash of opinions, the Parties shall undertake to resolve them by way of negotiations and consultations.

10. Строк дії Договору

10.1. Цей Договір набирає чинності з моменту його підписання і скріплення печатками Сторін та діє до повного виконання Сторонами своїх зобов'язань, але не пізніше 31 грудня 2012 року.

10.2. Закінчення строку Договору не звільняє Сторони від відповідальності за його порушення, яке мало місце під час дії Договору.

10. Duration of the Contract

10.1. The present Contract shall come into effect from the moment of its signature and sealing by the Parties and shall remain in effect until full execution by the Parties of their obligations but not later than 31 December 2012.

10.2. The expiry of Contract's duration shall not spare the Parties of responsibility for its violation that took place during the period of its being in effect.

11. Інші умови Договору

11.1. Будь-які змінн та доповнення до цього Договору набирають чинності з моменту належного оформлення Сторонами відповідної Додаткової угоди до цього Договору.

11.2. Одностороння відмова від виконання Сторонами своїх зобов'язань, які передбачені цим Договором, не допускається, крім випадків, передбачених цим Договором та чинним законодавством Україні.

11.3. У випадках, не передбачених цим Договором, Сторони керуються чинним законодавством України.

11.4. Цей Договір укладається у двох примірниках, що мають однакову юридичну силу, по одному для кожної Сторони.

11. Other provisions

11.1. Any amendments or supplements to the present Contract shall come into effect from the moment of proper formalisation by the Parties of any additional Agreement to the present Contract.

11.2. Unilateral refusal by any of the Parties to execute its obligations provided for in the present Contract shall not be allowed unless in case provided for in the present Contract or in the Ukrainian legislation in force.

11.3. In the cases not provided for in the present Contract, the Parties shall act pursuant to the Ukrainian legislation in force.

11.4. The present Contract is drawn up in two copies, each copy for each Party, that have equal legal force.

12. Місцезнаходження та банківські реквізити сторін

ЗАМОВНИК:

Міністерство юстиції України
Юридична адреса: 01001, м. Київ,
вул. Городецького, 13
Фізична адреса: м. Київ,
пров. Рильський, 10
Тел.: 271-15-72
код за ЄДРПОУ 00015622
Р/рахунок 35213036000030
в Державному Казначействі України
МФО 820172

Заступник Міністра юстиції – керівник апарату

_____ **А.Ю.Сєдов**

ВИКОНАВЕЦЬ:

Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates
68, rue du Faubourg Saint-Honoré
75008 Paris, France
T: 331.55.27.11.00
F: 331.55.27.21.99
Partner

_____ **Gregory B. Craig**
Seal

Gregory B Craig
AVDZ

12. Legal addresses and bank data of the Parties

THE EMPLOYER:

Ministry of Justice of Ukraine
Legal address: 13, Horodetskogo St., Kyiv,
01001, Ukraine
Physical address: 10, Rylskiy Lane, Kyiv
Tel.: 380-44-279-48-56
Fax: 380-44-279-38-74
C/a 35213036000030
in the DKU
MFO 820172
Identification code 00015622

Deputy Minister - Head of Apparat of the Ministry of Justice

_____ **Mr. Sedov A.Y.**

THE EXECUTOR:

Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates
68, rue du Faubourg Saint-Honoré
75008 Paris, France
T: 331.55.27.11.00
F: 331.55.27.21.99
Partner

_____ **Gregory B. Craig**
Seal

Gregory B Craig
AVDZ

ATTACHMENT B

Proposed Agreement in English dated April 10, 2012

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111
TEL: (202) 371-7000
FAX: (202) 393-5760
www.skadden.com

CONFIDENTIAL

April 10, 2012

To: The Ministry of Justice
The Government of Ukraine

From: Gregory B. Craig, Partner

Subject: Retainer Memorandum

Re: Terms and Conditions

We are pleased that you are retaining Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden Arps" or the "Firm") in connection with the assignment described below ("the Engagement"). It is agreed that the terms of this Retainer Memorandum will be incorporated by reference into the Agreement between the Firm and the Ministry of Justice of the Government of Ukraine ("the Ministry") to which this Retainer Memorandum has been attached.

Scope of Engagement

The Engagement involves serving as a rule of law consultant to the Ministry and advising the Ministry on a variety of rule of law issues, including those that may arise before the European Court for Human Rights. The services to be provided by the Firm in connection with the Engagement will encompass those legal services normally and reasonably associated with this type of engagement which the Firm has been requested to provide and which are consistent with its ethical obligations. It is understood that the Firm's client is the Ministry, which is a department of the Government of Ukraine. The Firm is willing to take on this project with the clear understanding that the Firm will have access to all relevant materials and information that the Firm deems necessary to do its job, and that the Firm will be free to reach its own conclusions based on its own independent work. It is understood that the Firm is not being retained to engage in any "political activities" – and will not engage in any such activities – as defined in the Foreign Agent Registration Act (FARA).

Engagement Personnel

Gregory Craig will be responsible for and actively involved in the Engagement. Other lawyers involved in the Engagement will include Clifford Sloan, Mike Loucks and Matthew Cowie. Additional lawyers will be added on an as-needed basis.

Fees and Expenses

Our fees will be based on the time that the Firm's lawyers spend on the Engagement along with our out of pocket expenses. In addition to the terms for payment set forth in the Agreement to which this memorandum is attached, we have agreed to offset our fees for time – charged at our normal hourly rates – and reimbursement of our out-of-pocket expenses against a retainer that has been paid in advance.

As for out-of pocket expenses, see Annex A attached. This may be periodically updated.

Waivers and Related Matters

The Firm represents a broad base of clients on a variety of legal matters. Accordingly, absent an effective conflicts waiver, conflicts of interest may arise that could adversely affect your ability and the ability of other clients of the Firm to choose the Firm as its counsel and preclude the Firm from representing you or other clients of our Firm in pending or future matters. Given that possibility, we wish to be fair not only to you, but to our other clients as well. Accordingly, this letter will confirm our mutual agreement that the Firm may represent other present or future parties on matters other than those for which it had been or then is engaged by the Government, whether or not on a basis adverse to the Ministry or any of its present or future affiliates, including in litigation, legal or other proceedings or matters, which are referred to as "Permitted Adverse Representation."

In furtherance of this mutual agreement, the Ministry agrees that it will not for itself or any other party assert the Firm's representation of the Ministry or any of its present or future affiliates, including any other organs of the Government of Ukraine, either in its representation in the Engagement or in any other matter in which the Ministry retains the Firm, as a basis for disqualifying the Firm from representing another party in any Permitted Adverse Representation and agrees that any Permitted Adverse Representation does not constitute a breach of any duty owed by the Firm. The waiver provided for in this and the preceding paragraph includes the Firm's ongoing representation of OAO Gazprom and any of its present or future affiliates or subsidiaries. The Ministry agrees that this paragraph and the preceding one do not expand the scope of the Engagement to encompass affiliates of the Ministry unless expressly agreed to by the Firm.

Duty of Confidentiality

Our representation in this Engagement is premised on the Firm's adherence to its professional obligation not to disclose any confidential information or to use it for another party's benefit without the Ministry's consent. Such obligations are subject to certain exceptions, including the laws, rules and regulations of certain jurisdictions relating to money laundering and terrorist financing. Provided that the Firm acts in the manner set forth in the first sentence of this paragraph and subject to the exceptions noted above, the Ministry will not for itself or any other

party assert that the Firm's possession of such confidential information, even though it may relate to a matter for which the Firm is representing another client or may be known to someone at the Firm working on the matter (a) is a basis for disqualifying the Firm from representing another of its clients in any matter in which the Ministry or any other party has an interest; or (b) constitutes a breach of any duty owed by the Firm. In addition, the Firm's failure to share with the Ministry any confidential information received from another client will not be asserted by the Ministry as constituting a breach of any duty owed to the Ministry by the Firm, including any duty regarding information disclosure.

If the Firm receives from any person or entity a subpoena or request for information that is within our custody or control or the custody or control of our agents or representatives, we will, to the extent permitted by applicable law, advise the Ministry before responding so that the Ministry has the opportunity to intervene or interpose any objections. Should the Ministry object to the provision of such information, the Firm may thereafter provide such information only to the extent authorized by the Ministry or required by a court or other governmental body of competent jurisdiction. The Ministry agrees to pay the Firm for any services rendered and charges and disbursements incurred in responding to any such request at the Firm's customary billing rates and pursuant to the Firm's charges and disbursements policies.

The Ministry agrees that the Firm may disclose the fact of this Engagement and related general information to the extent that such disclosure does not convey any confidential or non-public information and it is not adverse to the Ministry's interests.

Client Files and Retention

In the course of our work on this matter, we shall maintain a physical file relating to the matter. In the file we may place materials received from you with respect to the matter and other materials, including correspondence, memos, filings, drafts, closing sets, pleadings, deposition transcripts, exhibits, physical evidence, expert's reports, and other items reasonably necessary to your representation (the "Client File"). The Client File shall be and will remain your property. We may also place in the file documents containing our attorney work product, mental impressions or notes, and drafts of documents ("Work Product"). You agree that Work Product shall be and remain our property. In addition, electronic records (except those to be proffered to you at the conclusion of a matter as described below) such as e-mail and documents prepared on our word processing system shall not be considered part of your Client File unless it has been printed in hard copy and placed in your physical file, and does not constitute Work Product. You agree that we may adopt and implement reasonable retention policies for such electronic records and that we may store or delete such records in our discretion.

At the conclusion of a matter (which shall be defined as the time that our work on any matter subject to this letter has been completed), you shall have the right to take possession of the original of your Client File (but not including the Work Product). We will be entitled to make physical or electronic copies if we choose. You also agree, upon our proffer, at the conclusion of

a matter (whether or not you take possession of the Client File), to take possession of any and all original contracts, stock certificates, deeds and other such important documents or instruments that may be in the Client File, without regard to format, and we shall have no further responsibility with regard to such documents or instruments. If you do not take possession of the Client File at the conclusion of a matter, we will store such file in accordance with our standard retention procedures for a period of at least seven (7) years (the "Retention Period"). Such retention (or maintenance of accounting or other records related to our representation) shall not constitute or be deemed to indicate the presence of a continuing attorney-client relationship. During the time that we store the Client File, you shall have the right to take possession of it at any time that you choose. Subject to the foregoing, we may dispose of the Client File without further notice or obligation to you.

* * *

The provisions of this Retainer Memorandum will continue in effect, including if the Firm's representation is ended at your election (which, of course, the Ministry is free to do at any time) or by the Firm (which would be subject to ethical requirements). In addition, the provisions of this Retainer Memorandum will apply to future engagements of the Firm by the Ministry unless we mutually agree otherwise.

This agreement and any claim, controversy or dispute arising under or relating to this agreement, the relationship of the parties, and/or the interpretation and enforcement of the rights and duties of the parties shall be governed by, and construed in accordance with, the laws of the State of New York. For purposes of this letter, references to Skadden Arps or the Firm include our affiliated law practice entities.

In the event there is found to be any inconsistency between the terms of this Retainer Memorandum and the Agreement between the Ministry and the Firm to which this Memorandum is attached, the terms of this Retainer Memorandum will take precedence.

If this letter is satisfactory, please sign a copy and return it to me.

We appreciate the opportunity to work on this project and look forward to doing so.

With best regards.

Sincerely,

Gregory B. Craig

By: _____
Name:
Title:

Dated: As of

Enclosures

ANNEX A

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP AND AFFILIATES
Policy Statement Concerning Charges and Disbursements
Effective April 1, 2010

Skadden Arps bills clients for reasonable charges and disbursements incurred in connection with an engagement. Clients are billed for disbursements based on the actual cost billed by the vendor or in a few cases noted below, at rates derived from internal cost analyses or at rates below or approximating comparable outside vendor charges.

I. Research Services. Charges for LexisNexis and Westlaw are billed at levels below that which would be charged for individual usage on a particular engagement. Clients are billed at rates calculated from an aggregate discounted amount charged to and paid by the Firm to LexisNexis and Westlaw. Thomson Research services are charged based on client usage allocated from actual vendor charges. Charges for other services outside research services are billed at the actual amounts charged by vendors.

The State of Delaware Database provides computer access to a corporations database in Dover, Delaware. The charge for this service is $50 per transaction, which is the average amount charged by outside services.

II. Travel-Related Expenses. Out-of-town travel expenses are billed at actual cost and include air or rail travel, lodging, car rental, taxi or car service, tips and other reasonable miscellaneous costs associated with travel. Corporate and/or negotiated discounted rates are passed on to the client. Specific Firm policies for expenditures relating to out-of-town travel include:

- *Air Travel. Coach class is the standard on most U.S. domestic flights. However, for flights with scheduled flight times longer than 5 hours and international flights business class is generally used.*
- *Lodging. We strive to book overnight accommodations at hotels with which the Firm or the Client has preferred corporate rates.*

Local travel charges include commercial transportation and, when a private car is used, mileage, tolls and parking. Specific policies govern how and when a client is charged for these expenses; these include:

- *Fares for commercial transportation (e.g., car service, taxi, rail) are charged at the actual vendor invoice amount. The charge for private car usage is the IRS rate allowance per mile (or the equivalent outside the United States) plus the actual cost of tolls and parking.*
- *Round-trip transportation to the office is charged for attorneys who work weekends or holidays. Transportation home may be charged on business days when an attorney works past a certain hour (typically 8:30 p.m.) and has worked a minimum of ten hours that day.*
- *Local travel for support staff is charged when a staff member works past a certain hour (typically 8:30 p.m.). Charges are limited by Firm policy and depend on form of transportation and distance traveled.*

III. Word Processing, Secretarial and other Special Task-Related Services. Routine secretarial tasks (correspondence, filing, travel and/or meeting arrangements, etc.) are not charged to clients. Word processing services associated with preparing legal documents are charged at $50 (£25/€35) per hour.

Specialized tasks (such as EDGAR filings or legal assistant services) are recorded in the appropriate billing category (for example, legal assistant services are recorded as fees in "Legal Assistant Support" on bills)

IV. Reproduction and Electronic Document Management. Photocopying services (including copying, collating, tabbing and velo binding) performed in-house are charged at $0.15 (£0.07/€0.11) per page, which represents the average internal cost per page. Color photocopies are charged at $0.80 (£0.40/€0.55) per page (based on outside vendor rates). Photocopying projects performed by outside vendors are billed at the actual invoice amount. Special arrangements can be made for unusually large projects.

Electronic Data Management services (e.g., scanning, OCR processing, data and image loading/exporting, CD/DVD creation, printing from scanned files, and conversions) performed by outside vendors are billed at the actual invoice amount and those performed in-house are billed at rates comparable to those charged by outside vendors.

V. Electronic Communications. Clients are charged for communications services as follow:

Telephone Charges. There is no charge for local telephone calls or internal long distance telephone calls. External telephone calls such as collect, cellular calls, credit card, hotel telephone charges and vendor-hosted conference calls are charged at the vendor rate plus applicable taxes and are assigned to the specific matter for which such charges were incurred.

Facsimile Charges. There is no charge for facsimile usage

VI. Postage and Courier Services. Outside messenger and express carrier services are charged at the actual vendor invoice amount which frequently involves discounts negotiated by the Firm. Postage is charged at actual mail rates. On certain occasions, internal staff may be required to act as messengers in which case the staff's applicable hourly rate is charged.

VII. UCC Filing and Searches. Charges for filings and searches, in most instances, are billed at the flat fee charged by the vendor. Unusual filings and searches will be charged based on vendor invoice.

VIII. Meals. Business meals are charged at actual cost. Luncheon and dinner meetings at the Firm are charged based on the costs developed by our food service vendor. Breakfast, beverage and snack services at the Firm's offices are not charged, except in unusual circumstances.

When overtime, weekend or holiday work is required, clients are charged for the actual, reasonable cost of an attorney's meal and, for non-attorneys, a standard amount determined by Firm policy.

IX. Direct Payment by Clients of Other Disbursements. Other major disbursements incurred in connection with an engagement will be paid directly by the client. (Those which are incurred and paid by the Firm will be charged to the client at the actual vendor's invoice amount). Examples of such major disbursements that clients will pay directly include:

Professional Fees (including disbursements for local counsel, accountants, witnesses and other professionals)
Filing/Court Fees (including disbursements for agency fees for filing documents, standard witness fees, juror fees)
Transcription Fees (including disbursements for outside transcribing agencies and courtroom stenographer transcripts)
Other Disbursements (including any other required out-of-pocket expenses incurred for the successful completion of a matter)

* * * * *

* *Fees incurred for attorney and Firm personnel in connection with the Engagement are not covered by this policy.*

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ATTACHMENT C

Letter from Ministry of Justice dated December 20, 2012

Unofficial translation

Date: 20 of December, 2012

Skadden, Arps, Slate,
Meagher & Flom LLP and
Affiliates
For Gregory Craig

1440 New York Avenue NW
Washington DC 20005

Dear Mr. Craig!

In addition to the letter of 28 August, 2012 please, be informed that the Ministry of Justice of Ukraine according to the legislation of Ukraine has started the procedure of legal service procurement on expert research of the compliance of the principle of the rule of law in the case of *«Tymoshenko v. Ukraine»*, which will allow us to conclude agreement in the nearest future, which will cover the need to increase the cost of services and compensate the firm's expenses.

To comply with the Law of Ukraine On Public Procurement, we request to provide the Ministry of Justice of Ukraine the following list of mentioned below documents or those with similar information:

- Confirmation that the Firm has employees with respective qualifications that have adequate knowledge and experience;
- Confirmation that the Firm has documental proof of execution of similar contracts or copies of respective contracts;
- Documents that confirm financial standing: firm's balance, report on financial performance, report on cash flow in corporate accounts as of the last reporting date and confirmation from your bank whether or not you have outstanding payments on your corporate loans.

Sincerely,

Deputy Minister-
Head of personnel

A.Y. Sedov

МІНІСТЕРСТВО ЮСТИЦІЇ УКРАЇНИ

Україна, 01001, м.Київ
вул. Городецького, 13
Тел./факс: +380 44 278-37-23

MINISTRY OF JUSTICE OF UKRAINE

13, Horodetskogo St.
Kyiv 01001, Ukraine
Tel/fax: +380 44 278-37-23

20.12.2012 № _____

На № _____

Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates
Грегорі Крейгу

1440 New York Avenue N.W,
Washington D.C. 2005

Шановний пане Крейг!

На додаток до листа від 28 серпня 2012 року інформуємо, що Міністерством юстиції України відповідно до вимог законодавства України розпочато процедуру закупівлі послуг з експертного дослідження щодо дотримання принципу верховенства права у справі «Тимошенко проти України», яка дозволить найближчим часом укласти угоду в якій будуть врегульовані питання необхідності збільшення вартості послуг та відшкодування витрат Виконавця.

На виконання вимог закону України «Про здійснення державних закупівель» просимо надати Міністерству юстиції нижченаведені документи або такі, що містять аналогічну інформацію:

- довідку у довільній формі про наявність працівників відповідної кваліфікації, які мають необхідні знання та досвід;
- довідку у довільній формі про наявність документально підтвердженого досвіду виконання аналогічних договорів або копії відповідних договорів;
- документи, підтверджуючі фінансову спроможність: баланс, звіт про фінансові результати, звіт про рух грошових коштів на останню звітну дату та довідку з обслуговуючого банку про відсутність (наявність) заборгованості за кредитами.

З повагою

Заступник Міністра –
керівник апарату **А.Ю. Седов**

ATTACHMENT D

Reply from Skadden dated February 4, 2013

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000
FAX: (202) 393-5760
www.skadden.com

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SHANGHAI
SINGAPORE
STONEY
TOKYO
TORONTO
VIENNA

February 4, 2013

The Honorable A.Y. Sedov
Deputy Minister – Head of Personnel
Ministry of Justice of Ukraine
13 Horodetskogo Street
Kiev 01001, Ukraine

Dear Deputy Minister Sedov:

In your letter of 20 December 2012, you asked me, on behalf of Skadden, Arps, Slate, Meagher & Flom ("the Firm"), to provide the Ministry of Justice of Ukraine with certain information about the Firm's capacities, qualifications, record of performance in the past and financial standing.

You have asked for this information in connection with the Ministry's desire to reach a new and additional agreement with the Firm – consistent with Ukraine's procurement requirements – that will cover the increase in the cost of services and expenses associated with the Firm's work as special counsel to the Ministry on the rule of law.

You have asked for information about the following topics:

(1) Whether the lawyers working on this project are qualified and have adequate knowledge and experience;

(2) Whether the Firm has performed similar services for and signed similar agreements with other clients; and

(3) Whether the Firm is in good financial standing.

I am attaching materials to this letter that should address and answer each of these concerns.

As I understand it, the Ministry is not proposing any change in the Firm's assignment. To be even more specific, the Ministry understands and accepts that the Firm will not be required to - and will not – engage in any activities covered by the United States Foreign Agent Registration Act (FARA).

Thank you for the opportunity to be of service to the Ministry of Justice of Ukraine.

Very truly yours,

Gregory B. Craig

Attachment 1

Record of capacities and qualifications of Skadden lawyers working on assignment for the Ministry of Justice of Ukraine.

Biography

Gregory B. Craig

Partner
Skadden, Arps, Slate, Meagher & Flom LLP
Litigation

A trial lawyer with extensive experience in a wide variety of cases, Greg Craig has successfully defended individuals and entities in a number of high-profile criminal and civil proceedings.

Civil Litigation: Examples of Mr. Craig's civil litigation experience include the following.

In 2000, Mr. Craig successfully represented Elian Gonzalez's father, Juan Miguel Gonzalez, in administrative and court proceedings involving Mr. Gonzalez's effort to regain custody of his son. Also in 2000, Mr. Craig helped lead the trial team representing Warnaco in contract/license litigation with Calvin Klein and his company. In 1999, Mr. Craig represented a major corporation in a trial in which a senior executive brought suit against the company alleging age discrimination. Mr. Craig represented former U.N. Secretary General Kofi Annan in connection with the Volcker Commission's investigation of the Oil-for-Food Programme at the U.N.

During the last 15 years, Mr. Craig has represented a variety of foreign individuals and entities that have required advice and assistance with various U.S. government agencies, including the Consular Bureau in the State Department, the Immigration and Naturalization Service, the Office of Foreign Asset Control in the Treasury Department and the Securities and Exchange Commission. For example, Mr. Craig represented two Chicago policemen in extradition proceedings in federal court in Chicago and brought a declaratory judgment action on their behalf in federal court in Washington, D.C., which resulted in a federal judge finding the U.S. extradition statute of 1848 unconstitutional.

From 1978 to 1979, Mr. Craig represented Alexander Solzhenitsyn in a libel case in federal court in San Francisco and advised him on other matters up through 1983. In 1977, he brought suit on behalf of one of the first (and lead) plaintiffs in the swine flu litigation that was subsequently consolidated by the Judicial Panel on Multidistrict Litigation. From 1973 to 1975, working with Edward Bennett Williams, Mr. Craig represented the clubs of the National Hockey League in antitrust litigation involving the World Hockey Association. From 1972 to 1974, working with Joseph A. Califano, Jr., Mr. Craig represented the Washington Post Company and various reporters in connection with the Watergate scandal and the grand jury investigation of Vice President Spiro Agnew.

(continued)

Washington, D.C. Office

T: 202.371 7400
F 202.661 9100

E. gregory.craig@skadden.com

Education

J.D., Yale Law School, 1972

Diploma in Historical Studies, Cambridge University, 1968

The Lionel DeJersey Harvard Fellowship ("The John Harvard Fellow"), 1968

A.B., Harvard College, 1967 (*magna cum laude*; Phi Beta Kappa)

Bar Admissions

District of Columbia

U.S. Supreme Court

U.S. Courts of Appeals for the District of Columbia, Second, Third, Fourth, Sixth, Seventh and Eleventh Circuits

U.S. District Courts for the District of Columbia, Central and Northern Districts of California, District of Connecticut, Southern District of New York, District of Maryland, Eastern District of Virginia, Central and Eastern Districts of Michigan, Southern District of Florida, and Central District of Alabama

Associations

Member, Board of Trustees, German Marshall Fund of the United States

Biography

Gregory B. Craig

Criminal Litigation: Examples of Mr. Craig's criminal litigation experience include the following:

Mr. Craig has been an active participant in the American criminal justice system for more than 35 years. His career as a criminal defense lawyer began in 1974 when he became the assistant federal public defender for the District of Connecticut. He served in that capacity until September of 1976. Since then, Mr. Craig has represented numerous American corporations and corporate executives who have been the subjects of grand jury investigations and/or who also have been charged with criminal offenses.

In 1975, he represented an individual charged with arson in a six-week trial in federal court in Connecticut. In 1977, working with Edward Bennett Williams, Mr. Craig represented Mr. Richard Helms, a former director of Central Intelligence, who was under grand jury investigation for perjury. That same year, he represented the first FBI agent ever to be indicted, who was accused of illegal wiretapping, breaking and entering, and mail opening in connection with the FBI investigation of the Weather Underground. In 1978 to 1980, also with Edward Bennett Williams, Mr. Craig represented a prominent local businessman charged with bribing a D.C. government official. In 1981 to 1982, working with Vince Fuller, Mr. Craig represented John Hinckley, who was charged with the attempted assassination of President Reagan. In 1983 to 1984, working with Edward Bennett Williams, Mr. Craig represented a prominent businessman who was charged with tax evasion in federal court in Miami. In 1990, Mr. Craig represented Senator Edward M. Kennedy in connection with the trial of his nephew, William Kennedy Smith, in Palm Beach, Florida.

Other Experience:

For five years (1984-1988), he served as Senator Edward M. Kennedy's senior adviser on defense, foreign policy and national security issues.

In 1997, Secretary of State Madeleine Albright appointed Mr. Craig to be one of her senior advisers, and he served the Secretary as her Director of Policy Planning during the years 1997 to 1998.

In September 1998, President Clinton appointed Mr. Craig to be Assistant to the President and Special Counsel in the White House, where Mr. Craig led the team that was assembled to defend against impeachment. Mr. Craig also was a member of President Clinton's trial team in the United States Senate and presented the defense with respect to Count One during that trial.

From January 2009 to January 2010, Mr. Craig served as President Obama's White House Counsel.

Mr. Craig also has taught trial practice at both Yale Law School (1975-1976) and Harvard Law School (1981-1984).

In addition, Mr. Craig has served on the boards of many non-governmental organizations and foundations, including The Carnegie Endowment for International Peace (vice chair); the International Human Rights Law Group (chair); the Robert F. Kennedy Memorial; and the American Security Project. He repeatedly has been selected for inclusion in *The Best Lawyers in America*.

Government Service

White House Counsel (2009-2010)

Assistant to the President and Special Counsel, The White House (1998-1999)

Director of Policy Planning, United States State Department (1997-1998)

Senior Adviser on Defense, Foreign Policy and National Security, Senator Edward Kennedy (1984-1988)

Biography

Cliff Sloan

Partner
Skadden, Arps, Slate, Meagher & Flom LLP
Litigation, Intellectual Property, Media and Entertainment

An experienced litigator, Mr. Sloan has litigated cases at all levels of federal and state courts, including six U.S. Supreme Court arguments, numerous arguments in the U.S. Courts of Appeals, and matters in trial and district courts across the country.

Mr. Sloan's practice focuses on a wide range of litigation and appeals, including cases involving intellectual property, administrative law, commercial disputes, securities law, tax controversies and constitutional issues. He also regularly advises clients on copyright, trademark, new media and First Amendment matters.

His litigation experience includes:

- a U.S. Supreme Court argument in February 2012, in a case about the scope of the Double Jeopardy Clause (*Blueford v. Arkansas*);
- a reversal of a summary judgment order dismissing Rosetta Stone's trademark infringement claims against Google, in a case he argued, in the U.S. Court of Appeals for the Fourth Circuit (*Rosetta Stone v. Google*);
- an *en banc* victory, in a case he argued, in the U.S. Court of Appeals for the First Circuit in an SEC case on the scope of Section 10b-5 liability (*SEC v. Tambone*);
- a victory in a music copyright infringement lawsuit in which he was lead counsel for the Bon Jovi band, as well as more than a dozen media and entertainment defendants, in the U.S. Court of Appeals for the First Circuit and the U.S. District Court for the District of Massachusetts (*Steele v. Turner Broadcasting*);
- a victory in a constitutional challenge to a Hawaii statute targeting an out-of-state company in which he was lead counsel for the company (*HRPT v. Lingle*); and
- a dismissal on sovereign immunity grounds for the Principality of Monaco in the U.S. District Court for the Central District of California (*Eringer v. Principality of Monaco*).

Mr. Sloan has served in high-ranking positions in all three branches of the federal government, including experience as Associate Counsel to the President and Assistant to the Solicitor General. He also has served on the U.S. Court of Appeals for the District of Columbia Circuit's Advisory Committee on Procedures.

(continued)

Washington, D.C. Office

T: 202.371.7040
F: 202.661.8340

E: cliff.sloan@skadden.com

Education

J.D., Harvard Law School (*magna cum laude*), 1984

B.A., Harvard College (*magna cum laude*), 1979

Bar Admissions

District of Columbia

Illinois

Government Experience

Associate Counsel to the President of the United States (1993-1995)

Assistant to the Solicitor General, United States Department of Justice (1989-1991)

Associate Counsel, Office of Independent Counsel, Iran-Contra (1987-1988)

Law Clerk to Justice John Paul Stevens, United States Supreme Court (1985-1986)

Law Clerk to Judge J. Skelly Wright, United States Court of Appeals for the District of Columbia (1984-1985)

Executive Assistant, Congressman Sidney R. Yates (1979-1981)

Media and Internet Experience

General Counsel, Washingtonpost.Newsweek Interactive (2000-2008)

Publisher, *Slate Magazine* (2006-2008)

Vice President, Business Development, Washingtonpost.Newsweek Interactive (2002-2005)

Biography

Cliff Sloan

Among his other activities, Mr. Sloan has been a leader in Internet litigation. *The National Law Journal* has described him as "an expert on cyberspace," and *The New York Times* singled out his *amicus curiae* brief in a landmark Supreme Court Internet case as "very likely" having a significant impact on the Justices.

From 2000 to 2008, Mr. Sloan served as General Counsel of Washingtonpost.Newsweek Interactive, *The Washington Post Company*'s online subsidiary. He was active in the in-house bar, serving on the board of directors of the Association of Corporate Counsel and on the Advisory Board of *Corporate Pro Bono*. From 2005 to 2008, he also served as Publisher of *Slate Magazine*, which was acquired by The Washington Post Company in 2005. He has taught the law of cyberspace as an adjunct law professor at Georgetown University Law Center, George Washington University Law School and American University's Washington College of Law.

Mr. Sloan was selected for inclusion in *The Best Lawyers in America 2013*. He also has received numerous awards, including being named "Appellate Lawyer of the Week" by *The National Law Journal* in 2012 for his representation in a case before the U.S. Supreme Court; and one of *Min Magazine*'s "21 Most Intriguing People in Publishing" in 2007. He is a member of the Legal Services Corp.'s *Pro Bono* Task Force. Mr. Sloan is the co-author of *The Great Decision*, a book about the historic Supreme Court case *Marbury v. Madison* (Public Affairs, 2009), and comments regularly on Supreme Court developments.

Selected Publications

"Second Circuit Reverses Troubling Federal District Court Decision Affecting the Rights of Copyright Owners to Combat Online Piracy," *Media Law Resource Center*, April 2012

"Supreme Court's *Mayo Foundation* Opinion Grants Chevron Deference to Treasury Regulations," *The Tax Executive*, Spring 2011

"Goodbye to the 'Rule of Law' Justice," *The Washington Post*, April 10, 2010

"Why Marbury v. Madison Still Matters" *Newsweek*, March 2, 2009

ALLON KEDEM

EDUCATION

2002-2005 **Yale Law School**, New Haven, CT
J.D., June 2005
Honors: Soros Fellowship for New Americans (2004)
Publications: *Commodification and Contract Formation*, 73 U. CHI. L. REV. 1299 (2006) (with David Gamage)
Comment, *Can Attorneys and Clients Conspire?*, 114 YALE L.J. 1819 (2005)
Activities: Articles Editor – *Yale Law Journal*
Harlan Fiske Stone Prize – Morris Tyler Moot Court of Appeals

1998-2002 **Harvard College**, Cambridge, MA
A.B., *magna cum laude*, Social Studies, June 2002
Honors: Phi Beta Kappa, John Harvard Academic Scholarship
Greenman Debating Award, Coolidge Debating Prize
Activities: President – Harvard Speech and Parliamentary Debate Society

WORK EXPERIENCE

2011-Present **Skadden, Arps, Slate, Meagher & Flom**, Washington DC
Associate

2010-2011 **Hon. Elena Kagan, Associate Justice, U.S. Supreme Court**, Washington, DC
Law Clerk
Preparation of memoranda on petitions for certiorari, merits cases, and emergency motions; assistance with drafting of case opinions.

2009-2010 **Hon. Anthony M. Kennedy, Associate Justice, U.S. Supreme Court**, Washington, DC
Law Clerk
Prepared memoranda on petitions for certiorari, merits cases, and emergency motions; assisted with drafting of case opinions.

2007-2009 **Office of Legal Counsel, U.S. Department of Justice**, Washington, DC
Attorney-Adviser
Researched and drafted opinions on constitutional, statutory, and administrative law issues on behalf of the Attorney General.

2006-2007 **Hon. Pierre N. Leval, U.S. Court of Appeals for the Second Circuit**, New York, NY
Law Clerk
Drafted opinions, orders, and memoranda; edited articles and speeches.

2005-2006 **Hon. Mark R. Kravitz, U.S. District Court for the District of Connecticut**, New Haven, CT
Law Clerk
Provided legal research; drafted opinions and orders; managed court docket.

ALEX T. HASKELL

1735 Johnson Ave. NW, Unit H • Washington, DC 20009 • 202.371.7332 • alex.haskell@skadden.com

EDUCATION

THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL — Washington, DC
Juris Doctor; with honors — May 2011
Activities: Member, *The George Washington Law Review*
Member, Alternative Dispute Resolution Skills Board
Vice Magister, Phi Delta Phi International Legal Fraternity
Vice President, GW Law Democrats

UNIVERSITY OF PENNSYLVANIA — Philadelphia, PA
Bachelor of Arts in International Relations, *cum laude* — May 2008
Honors: Mortar Board Senior Honors Society, Pi Gamma Mu Honors Society in the Social Sciences
Activities: Theos Fraternity (Vice President), Kite and Key Society (Tour Guide and Ambassador)
Thesis: "Of Markets and Humans: The Failure of Neo-Liberal Globalization in Latin America."

EXPERIENCE

SKADDEN, ARPS, SLATE MEAGHER & FLOM LLP — Washington, DC
Associate — October 2011 – present

SKADDEN, ARPS, SLATE MEAGHER & FLOM LLP — Washington, DC
Summer Associate — May 2010 – July 2010

WASHINGTON NATIONALS BASEBALL CLUB, OFFICE OF CLUB COUNSEL — Washington, DC
Legal Intern — May 2009 – April 2010

- Drafted and reviewed sponsorship, employment, leasehold and other agreements entered into by the Club
- Conducted legal research and drafted memoranda regarding issues of compliance with State and Federal laws, along with the mandates and bylaws of Major League Baseball

SCHNUR ASSOCIATES, INC. — New York, NY
Political and Legislative Consulting Intern — May 2007 – August 2007

- Researched and analyzed proposed New York City, New York State, and Federal Legislation to determine the affects of the potential laws on our client's constituents
- Produced memoranda and led presentations on legislative and campaign strategies for elected officials

FOX SPORTS TELEVISION LATIN AMERICA – TORNEOS Y COMPETENCIAS — Buenos Aires, Argentina
Sports Television Intern and Translator — 2007 – December 2007

- Served as lead translator of programming, converting English programs into Spanish and vice versa

PANISH, SHEA AND BOYLE LLP — Los Angeles, CA
Legal Intern — Summer 2005

- Researched case law, analyzed statutes, and drafted internal memoranda regarding issues related to personal injury and product liability law suits
- Analyzed depositions, reviewed documents, and catalogued exhibits in preparation for civil litigation cases

BAR ADMISSION

- California State Bar (2011)

LANGUAGE SKILLS & INTERESTS

- Spanish (fluent)
- Organized Voter Protection and canvassing efforts for several national and state political campaigns
- Traveled extensively and participated in community service efforts throughout Europe and Latin America

Attachment 2

Confirmation of past performance and financial standing of Skadden.

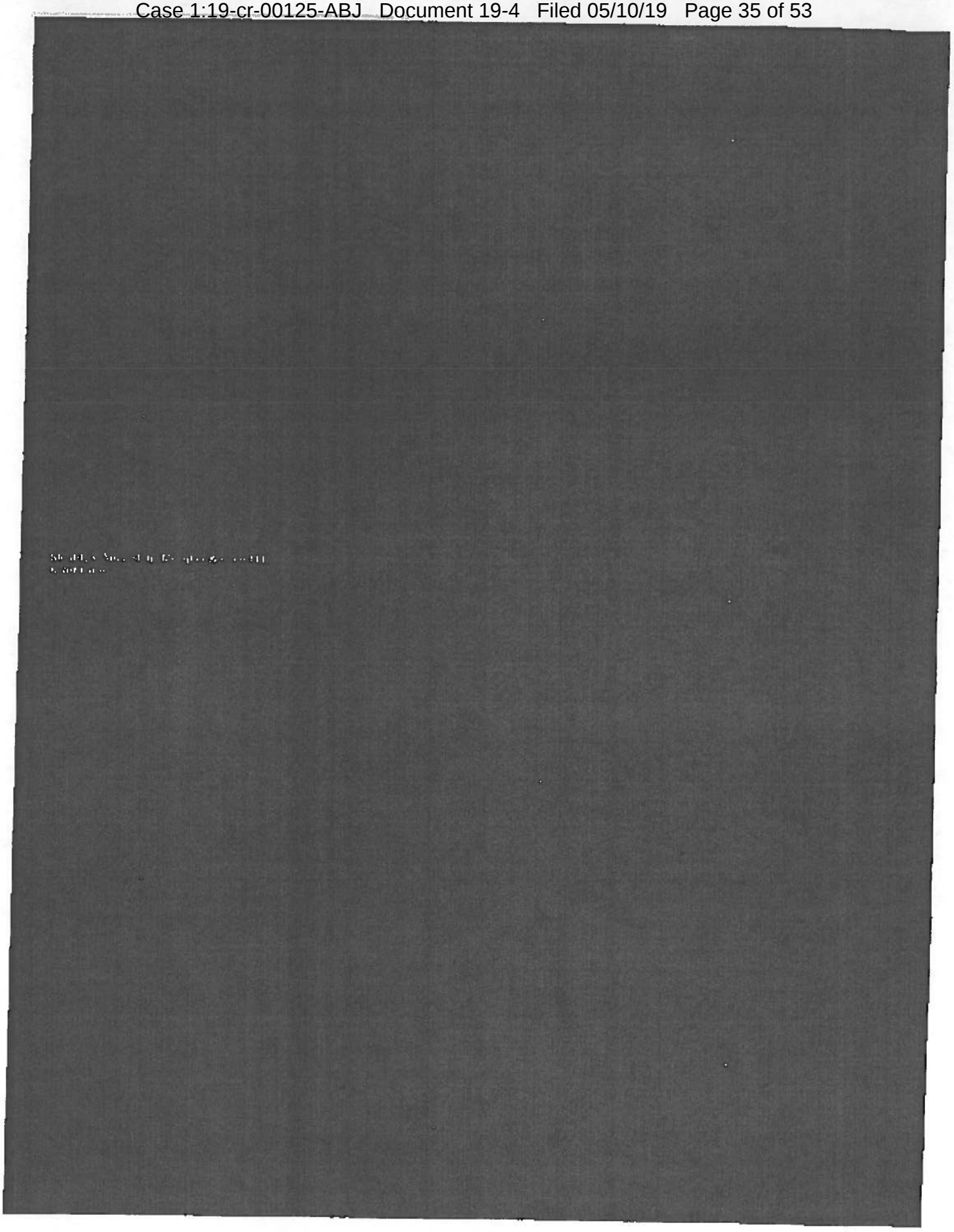
Skadden

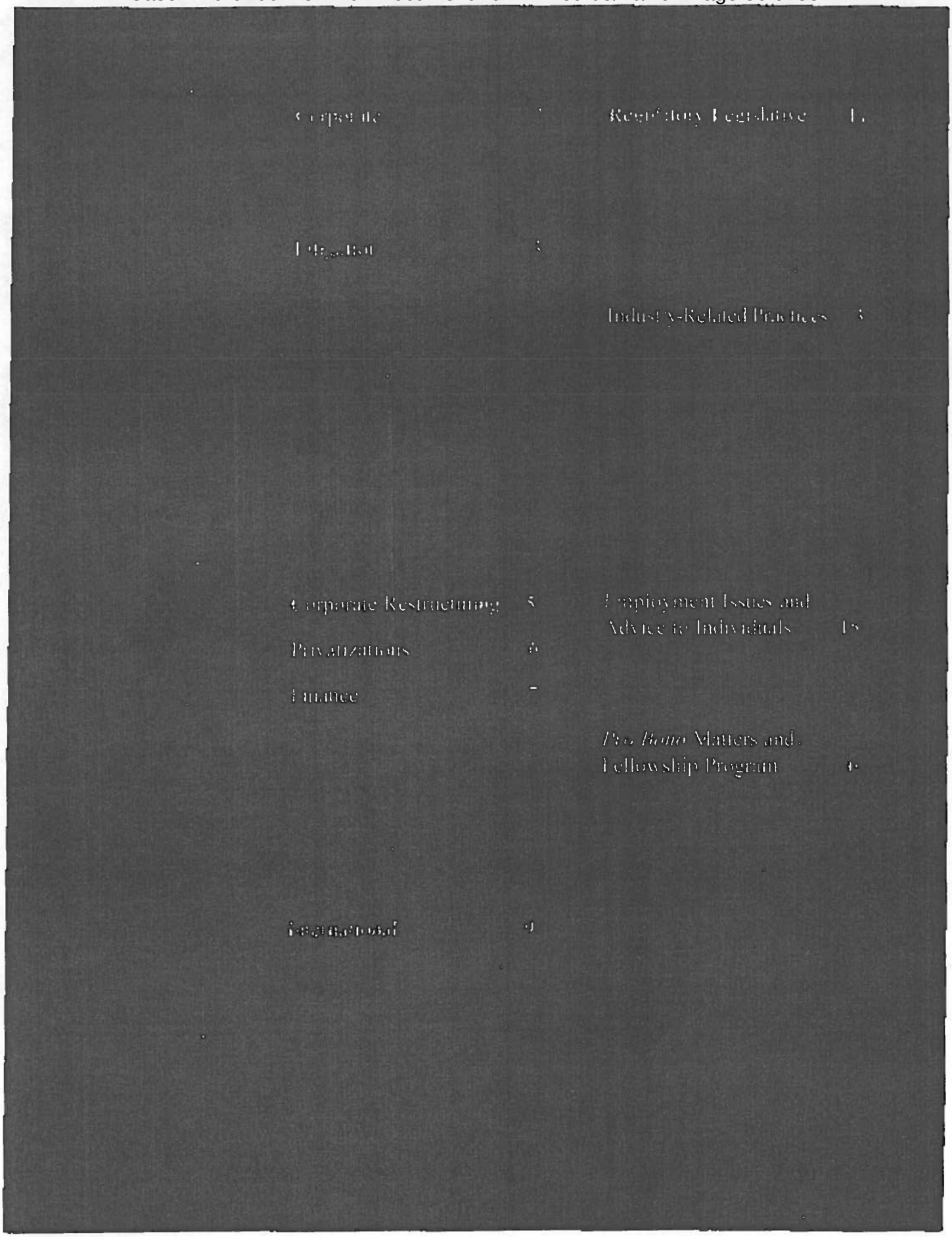
Skadden, Arps, Slate, Meagher & Flom LLP & Affiliates

Overview

The Skadden, Arps Philosophy

Skadden, Arps, Slate, Meagher & Flom LLP and affiliates ("Skadden, Arps" or "Skadden") was founded in 1948 by Marshall H. Skadden, Leslie H. Arps and John H. Slate. These three attorneys, quite different in personality and temperament, shared a vision of the firm that continues and thrives today — a commitment to professionalism and excellence in an atmosphere emphasizing teamwork, flexibility and responsiveness. Our primary goal is to provide high-quality and cost-effective legal service through careful attention to client relationships, practice diversity, global resources and investment in people and technology. Client needs always come first at Skadden. We work hard to instill this attitude in all of our attorneys and staff, recognizing that capable and dedicated people are the firm's most valuable asset.





Skadden A Diversified Practice

Our U S and International Clientele

Productivity and Efficiency

For 12 consecutive years, Skadden has been named the top corporate law firm in the United States in *Corporate Board Member* magazine's annual survey of "America's Best Corporate Law Firms" (May 10, 2012), which asked directors of publicly traded companies to identify the firms considered the best. Skadden also ranked first in a separate survey conducted by the magazine that asked general counsel which law firms they would most want to represent their companies on national matters. Skadden's reputation was originally built on our mergers and acquisitions work, yet today, with more than 40 distinct areas of practice, our attorneys provide a broad range of legal services across a spectrum of industries.

Mergers and Acquisitions The foundation of the firm's growth and prestige resulted from its involvement in groundbreaking and extremely large merger and acquisition (M&A) transactions. In the 2012, for the third consecutive year, Skadden has been named one of the two most innovative law firms in the *Financial Times'* "US Innovative Lawyers" We also were awarded "M&A Team of the Year" in 2012 at both the IFLR Americas Awards and IFLR Europe Awards. The firm's M&A practice also encompasses many mid-market and smaller transactions, including those for middle-market and emerging technology companies. Our attorneys represent both U.S. and non-U.S. clients in negotiated transactions, including mergers, stock or asset purchases, leveraged buy-outs and post-buyout transactions, as well as contested matters such as tender offers, proxy fights and other transactions involving changes in corporate control. We handle recapitalizations and restructurings, including spin-offs, divestitures and other techniques for maximizing value. Skadden's attorneys also assist clients in acquisitions involving financially troubled companies. In addition, our attorneys handle M&A transactions involving a broad range of industries, including insurance, utilities, health care, technology and communications.

Skadden ranked first in M&A by dollar value of deals globally according to 2012 year-end rankings from Bloomberg, mergermarket and Thomson Reuters; first in announced cross-border deals by value according to Bloomberg; and first in emerging markets and BRIC M&A categories by Thomson Reuters.

Private Equity We represent private equity and merchant banking firms in connection with all aspects of their business, including structuring and organizing fund sponsors and their investment funds; executing acquisition, financing and exit transactions; and providing transactional and general corporate advice to portfolio companies. We serve these clients in all of our major offices in the United States, Europe and Asia, providing the same comprehensive range of services as we do in general representations of large public companies, but with a focus on the special issues arising in the private equity business. Skadden was among *Law360's* Private Equity Groups of 2011.

Corporate Governance Skadden attorneys counsel clients on a full range of corporate governance and compliance matters under the Sarbanes-Oxley Act of 2002 and other applicable state and federal laws, as well as the regulatory requirements of the SEC, the New York Stock Exchange, the Nasdaq Stock Market and the American Stock Exchange. These matters include advising clients with respect to board of directors and committee composition, practices and procedures; development of board committee charters, governance guidelines, codes of conduct and other corporate programs and policies; directors' duties and responsibilities; and CEO/CFO certifications. The firm ranked first in dealing with board-level M&A issues and among the top three firms in dealing with both corporate governance and director liability issues by *Directors & Boards'* (2011) survey of board members and senior management at leading businesses.

Compliance and Ethics Programs We advise clients on the development and implementation of compliance and ethics programs — including management structures and control systems — to prevent and detect violations of law, regulations and company policies. We review and revise compliance and ethics policies, programs and procedures; draft codes of business conduct and ethics and related policies; and structure compliance reporting, investigating, auditing and monitoring procedures and training programs. We also provide guidance to clients on board and management oversight of compliance and ethics programs.

The depth and scope of Skadden's corporate practice stem from the diverse experience of our attorneys. The firm's capabilities in a wide range of corporate practices have been recognized over the years in numerous surveys of the legal profession.

Corporate

With approximately 500 litigation attorneys located throughout the firm's offices worldwide, Skadden represents clients in both trial and appellate courts at the federal and state level, before administrative tribunals, and in arbitrations and other dispute resolution proceedings

Securities Litigation The firm represents corporations and their officers and directors, as well as outside professionals, including accountants and attorneys, who have been sued in class action and derivative lawsuits. This includes defending clients against claims that a corporation has made false and misleading statements in violation of federal securities and/or state fraud laws. We frequently represent corporations, directors and officers in suits alleging violations of Section 10(b) of the U.S. Securities Exchange Act of 1934 (1934 Act). We counsel clients in "insider trading" cases under Sections 10(b) and 14(e) and in "short swing" profits cases under Section 16 of the 1934 Act. We also advise underwriters and issuers in litigation under the U.S. Securities Act of 1933 We are active in the legislative arena of securities litigation reform and offer our clients seminars on the latest developments. In addition, we appear regularly before the SEC, various securities exchanges and state securities commissions in connection with formal investigations, administrative proceedings and informal inquiries.

Antitrust Skadden's U.S. and international antitrust practice encompasses many significant competition issues for businesses. The firm's antitrust attorneys handle civil and criminal cases in federal and state courts nationwide, as well as counsel clients and litigate matters relating to mergers, acquisitions and joint ventures. Our attorneys appear regularly before the U.S. Department of Justice, the Federal Trade Commission (FTC) and state attorneys general in connection with proposed business combinations. We also have experience in all forms of antitrust litigation in federal courts and before the FTC. In the European Union, our attorneys appear regularly before the EU Commission and foreign regulatory authorities.

Banking The firm advises financial institutions in many different types of litigation, including challenges to regulatory actions, the validity of regulations, and litigation stemming from shareholder disputes and other internal corporate conflicts.

Commercial Contracts Our attorneys represent corporate clients and individuals in a variety of commercial disputes, including contract litigation, shareholder disputes and a wide range of other corporate-related litigation and business disputes.

International Litigation The firm handles commercial litigations, arbitrations and trade cases on behalf of and against U.S. and non-U.S. entities. Our international experience and numerous multilingual attorneys enable us to effectively represent non-U.S. plaintiffs and defendants in U.S. judicial proceedings. In the area of government enforcement litigation, the firm has represented defendants in cases of alleged fraud with international ramifications and matters with alleged international tax violations. The firm has also established a significant practice counseling domestic and foreign clients with respect to the U.S. Foreign Corrupt Practices Act.

International Arbitration Our international arbitration practice offers clients a wide range of mechanisms to resolve disputes by consensual rules outside the courts, including arbitration, mediation, conciliation and mini-trials. Skadden has represented U.S. and non-U.S. clients in arbitrations under all major rules systems and before every major international arbitral institution, including, among others, the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), the International Centre for Settlement of Investment Disputes (ICSID), the Stockholm Chamber of Commerce (SCC), and the Rules of the United Nations Commission on International Trade Law (UNCITRAL). We have represented companies in various industries including, but not limited to, construction, manufacturing, metals and mining, oil and gas, and power and energy. Skadden attorneys also serve as arbitrators on international arbitration tribunals. Additionally, we advise clients with respect to the enforcement of foreign arbitral awards in the United States and on strategies for challenging such foreign awards.

Appellate Litigation Skadden has handled many of the most important and precedent-setting business cases in the appellate courts. Our attorneys have argued significant cases before the United States Supreme Court, all 13 United States Courts of Appeal, and the state courts of last resort. The subject matter of these appeals is as diverse as the range of issues affecting business. Skadden's appellate lawyers study legal trends in federal and state appeals courts, as well as the inclinations of individual jurists, to enable us to advocate on behalf of our clients with respect to the appellate courts' evolving jurisprudence as a whole, and across a range of substantive law areas.

Mass Torts and Insurance Litigation Skadden, Arps has one of the premier complex litigation practices in the country and has been involved in most of the significant complex tort litigations in the past 20 years. We pioneered the "national counsel" model of handling mass tort litigation and have strong relationships with local defense lawyers in every state. The Group comprises experienced litigators who have defended cases on every level — from formulating and implementing national strategy in multijurisdictional litigation (MDL) to conducting Daubert hearings and trials, as well as pursuing significant appeals. We have been lead defense counsel in a number of MDL proceedings, developed experts and conducted expert discovery, mapped strategies to obtain important early victories on substantive motions in key jurisdictions, coordinated discovery in thousands of actions, and prepared for and conducted significant trials. Our attorneys also serve as appellate counsel in landmark cases in numerous state and federal appellate courts and file amicus briefs in appeals that raise significant class action and substantive law issues. The Group has successfully argued and won several U.S. Supreme Court victories, including one of the most important business cases heard by the Court, *State Farm Mutual Automobile Insurance Co. v. Campbell*, which set important constitutional limits on punitive damages awards.

Products Liability Skadden defends substantial products liability cases at trial and on appeal and often serves as national counsel in multijurisdictional products liability litigation. Our experience involves a broad range of products, including: prescription and over-the-counter drugs; medical devices; biotechnology products; computers, mobile phones and consumer electronics; regulated chemicals, raw materials and substances; Health Maintenance Organizations; life insurance; food products and dietary supplements; beverage products; consumer products; building products; asbestos and silica; lead paint; and smokeless tobacco. For many years, our attorneys have served as adjunct professors for products liability and mass torts courses at law schools, written and lectured frequently on these issues, and participated in the American Law Institute's debates over new drafts of the *Restatement (Third) of Torts: Products Liability*. Skadden received the 2011 Chambers USA Award for Excellence for "Products Liability Team of the Year." We also were selected as a finalist by *The American Lawyer* in the products liability section of its Litigation Department of the Year contest (January 2012), and we were named as one of only three "powerhouses" in the Class Action and Tort category in a survey of corporate counsel conducted by BTI Consulting and published by *Law360* in 2012.

Government Enforcement and White Collar Litigation Our attorneys defend corporations and their officers, directors and employees in complex criminal investigations and trials, civil and administrative proceedings, and congressional investigations. Skadden, Arps also defends current and former government officers and elected public figures in investigations being conducted by independent and special counsel, congressional committees and other authorities. We represent clients in related civil and administrative matters, including investigations by the SEC, the New York Stock Exchange, bank regulatory authorities, and other departments, commissions and agencies, as well as in *qui tam* claims and suspension/debarment actions. We also conduct internal investigations on behalf of boards of directors and special board committees.

Intellectual Property and Technology Skadden offers clients a full range of legal services relating to the acquisition, enforcement and commercial exploitation of intellectual property assets. These services include litigation; counseling; technology transfer, outsourcing and licensing agreements, and other transaction-related services; patent and technology portfolio strategy analysis; and trademark and copyright registration.

Alternative Dispute Resolution The firm assists clients in resolving disputes without litigation through various alternative dispute resolution (ADR) procedures, including binding and nonbinding arbitration, mediation, mini-trials, summary jury trials, expert fact-finding and early neutral evaluation. We help clients establish dispute handling systems for different categories of disputes. We also structure dispute resolution contract clauses for inclusion in client contracts, represent clients in individually tailored ADR proceedings, and serve as arbitrators, mediators and other neutrals in ADR proceedings.

Consumer Financial Services Enforcement and Litigation Skadden represents many of the nation's leading banks, insurance companies, securities firms and other consumer financial services companies in a broad array of government investigations, enforcement actions and class action litigations focused on the sale of financial products to consumers. Our Washington, D.C.-based group comprises lawyers with extensive experience as federal prosecutors and financial services regulators and in defending corporations in civil and criminal governmental investigations.

Corporate Restructuring

Our worldwide corporate restructuring practice serves corporations and their principal creditors and investors by providing "upper margin" value-added legal solutions in troubled company M&A, financing and restructuring situations. The firm represents companies, creditors, committees, acquirors, investors and others in nonjudicial debt restructurings, acquisitions, financings and related matters, and in Chapter 11 reorganization cases, including "prepackaged" and "prearranged" reorganizations. Our attorneys also counsel financially healthy companies on implementing changes to their capital or corporate structures designed to enhance enterprise value and in acquiring or making investments in financially troubled companies. We routinely advise on corporate transactions and corporate governance issues, negotiate with stakeholders and target companies, prepare out-of-court agreements with creditors, equity holders, prospective acquirors and investors, and handle refinancings, debtor in possession financing and bankruptcy-related litigation. We have acted as lead counsel in numerous transactional matters with sellers, purchasers and creditors across the Americas as well as throughout Asia, Australia, Europe and the Middle East. Skadden has two partners named among "The Decade's Most Influential Lawyers" by *The National Law Journal*. Our partners also have been recognized by *Chambers Global* and *Chambers USA* in their annual lists of the leading restructuring practices worldwide and in the United States; and *Global Counsel* in its annual list of the top 10 worldwide restructuring lawyers. We were recognized for DSW Group's restructuring as one of *Turnarounds & Workouts*' "Successful Restructurings of 2012." In addition, Skadden was named among *Law360*'s Bankruptcy Groups of 2011. We have advised on some of the most widely publicized corporate restructurings, including:

Acted as counsel in prepackaged reorganization cases on behalf of

The Antioch Company
Bluebird Corporation
CIT Group
Hayes Lemmerz
Herbst Gaming
Jackson Hewitt
Mark IV Industries
McLeodUSA
Metro-Goldwyn-Mayer
Mrs. Fields Original Cookies
The National Hockey League
RCN
Russell-Stanley
Verita Holdings

Acted as counsel in traditional Chapter 11 reorganization cases on behalf of

Access Industries
American Biltrite
Birch Telecom
Black Diamond Capital Management
C&S Wholesale Grocers
Circuit City Stores
Citicorp North America
Citigroup
Credit Suisse
Delphi
First Virtual Communications
Fortunoff
Friedman's
Goody's Family Clothing
Gordon Brothers Group
Hartmarx
Interstate Bakeries
Krispy Kreme Doughnut
LyondellBasell
MF Global
Neumann Homes
Oaktree Capital Management
Plastech Engineered Products
Radnor
Refco
Shane
Silverpoint Capital
Spansion
Spectrum Brands
The Sports Authority
Sportsman's Warehouse
Syms
Tweeter Home Entertainment Group
Ultimate Electronics
United Refining Energy
VeraSun Energy
Wilmington Trust
Winn-Dixie Stores

Advised the following companies in their nonjudicial restructuring activities:

Ainsworth Lumber
American National Power
America West Airlines
Amkor Technology
Centro Properties Group
CIBC World Markets
Dune Real Estate Funds
Evergreen International Aviation
Freescale Semiconductor
Harrah's
Hexcel
Huntsman
Intrawest Resorts
ION Media Networks
Lamda Partners
Marsico
Offshore Logistics
The Portland Trailblazers
Realogy
RREEF
Reliant Resources
Residential Capital
Rite Aid
SCOR
Sprint Nextel
Star Gas Partners
Tele Columbus Group
Travelport
Vita Group
Vulcan
Westwood One
The Williams Companies
Xerox
Ziff Brothers

Privatizations

We have assisted in the development and implementation of privatization programs internationally, while helping to reconcile the divergent business, political and social objectives inherent in the commercialization process. Assisting with the conversion from a state-owned to a private-market structure, we have helped draft the appropriate regulatory framework for the long-term operation of various sectors, as well as regulations that take into account the unique problems created during the transitional period when state-owned firms are privatized. Our global network of offices gives us a distinct advantage in coordinating the cross-border elements of these transactions.

In particular, we have experience in the privatization of companies in the petrochemical, telecommunications, energy, real estate, utility, manufacturing, automotive, airline, retail, pharmaceutical and food industries.

The firm has represented or is currently representing clients involved in the privatization of companies owned by the governments of:

Argentina
Australia
Austria
Belgium
Brazil
Bulgaria
China
Colombia
Czech Republic
Denmark
Finland
France
Germany
Greece
Hong Kong
Hungary
India
Indonesia
Ireland
Israel
Italy
Malaysia
Mexico
Morocco
New Zealand
Norway
Peru
Philippines
Poland
Portugal
Romania
Russia
Slovakia
South Africa
South Korea
Spain
Sweden
Thailand
Trinidad and Tobago
United Kingdom
United States
Venezuela

Corporate Finance Skadden attorneys advise underwriters, issuers, selling security holders and purchasers on public and private financings. Our experience extends to all types and combinations of debt and equity instruments and encompasses financings by U.S. and non-U.S. companies in financial markets worldwide. In a capital markets environment characterized by rapid change and innovation, our attorneys often structure new securities for clients in response to specific market needs. In 2012, the *Financial Times* ranked Skadden second in the country in its "US Innovative Lawyers" report, which recognized our representation of Barclays Bank in a $1.45 billion debt-or-in-possession credit facility in connection with ResCap's Chapter 11 bankruptcy filing.

Structured Finance Our attorneys advise underwriters, issuers, credit enhancers and investors on the securitization of assets such as credit card receivables, home mortgages, automobile installment loan contracts, student loans, trade receivables, commercial mortgages and many others. Skadden also has assisted investment banking firms and U.S. and non-U.S. banks in establishing "conduit" companies to securitize trade receivables, commercial loans, credit card receivables and consumer debt obligations originated by numerous lenders.

Project Finance With one of the world's largest international project finance practices, Skadden has assisted clients in more than 40 countries throughout Asia, the Americas, Europe, Africa and Australia. Our transactions involve the development, privatization, project financing and acquisition of many different types of infrastructure facilities, including, among others, those in the oil and gas, electric-generating and petroleum industries. Our U.S. project finance practice has been instrumental in several recent financings of sports stadiums and arenas.

Skadden ranked first by number of issues in representing issuers, for both U.S. debt and globally, in equity or equity-related offerings (Thomson Reuters, January 2013).

Banking We represent commercial banks, insurance companies, pension funds, finance companies, investment and merchant banking firms, private investment funds and other corporate lenders, as well as borrowers and issuers of securities, in a wide range of domestic and cross-border financing transactions. These transactions involve secured and unsecured loan agreements, letters of credit and other credit enhancement devices, note purchase agreements, project financing agreements, structured receivables arrangements, aircraft and other manufacturer financings, leveraged lease financings, loan syndications, acquisition financing arrangements, equity participations in the form of common and preferred stock investments, and offerings of convertible securities, warrants and partnership interests.

Derivative Financial Products, Commodities and Futures The firm represents a broad range of parties in transactions involving highly tailored "over-the-counter" derivative financial products. We advise commercial and investment banks and other dealers in the development of new products, as well as major corporations, insurance companies and other end-users of the products. Skadden also represents clients in traditional commodities transactions and in connection with exchange-listed futures and options. In this regard, we provide services internationally to major exchanges, commercial banks, insurance companies, portfolio managers, investment banks, traders and advisors.

Lease Financing Our attorneys handle U.S. and cross-border financings, with particular emphasis on innovative structures providing greater economic benefits for both lessors and lessees. Our attorneys have represented lessors, lessees and lenders in highly sophisticated cross-border and domestic leasing transactions that involve the financing of all types of assets ranging from rail equipment and oil production and gas processing facilities to satellites and steel making equipment. Our Lease Financing Group has consistently been a leader in developing new structures and pricing techniques and our accomplishments include, among others, the creation of the lease-leaseback structure, the first use of a commission foreign sales corporation (FSC) warehousing structure, the design of the replacement lease structure and its first application to rail equipment, and the first use of an enhanced "turbo" FSC lease by a life insurance company.

Investment Management The firm's attorneys advise clients on the structuring, formation, offering, operation and regulation of a wide range of registered and private domestic and offshore investment pools as well as other investment products, including tax-advantaged structures. We also counsel investment advisers, broker-dealers and banks on a wide variety of securities-related regulatory matters and provide assistance in connection with SEC investigations and proceedings.

Private Investment Funds A team of attorneys at Skadden focuses on organizing private investment funds for a broad spectrum of clients. These attorneys represent sponsors, investors and placement agents in connection with the formation and operation of pooled investment vehicles or funds. Unlike conventional mutual funds, private investment funds are designed to be exempt from registration under the federal securities and commodities laws. Our attorneys have experience with the full range of private investment activity, such as merchant banking and leveraged buyout funds, venture capital funds, offshore structured high-yield and mortgage derivative funds, bridge funds, "vulture" funds and funds tailored for specific industries, such as oil and gas, savings banks and insurance.

Skadden, Arps was selected as one of the leading law firms in the areas of international debt and equity by *Chambers Global: The World's Leading Lawyers for Business 2012*. Our capital markets practice was also recognized by *Chambers USA: America's Leading Lawyers for Business 2012* in its listing of the leading practices in the United States.

Finance

Europe With offices located in London, Paris, Brussels, Frankfurt, Munich, Vienna and Moscow, Skadden has handled substantial matters in nearly every country in the greater European region, and in Africa and the Middle East. Skadden's European practice focuses primarily on corporate transactions, including mergers, acquisitions, privatizations, private equity and venture capital matters, initial public offerings and other equity capital market matters, high-yield and other debt security offerings, European Union law and other competition issues, project finance, joint ventures and infrastructure development, corporate restructurings and workouts, and banking transactions, including acquisition finance and structured finance. The firm's European practice also represents clients in connection with international arbitration and English litigation and regulatory matters.

The firm advises on U.S., English, French, German, Russian and Austrian law, allowing us to address the multijurisdictional aspects of cross-border transactions, as well as specific domestic legal issues. Our European Union law practice advises on antitrust and competition law, intellectual property and international trade matters. We also advise government and private sector clients on rapidly evolving telecommunications laws and regulations in the European Union.

Serving clients in every major international financial center, the depth and breadth of Skadden's practice as well as our geographic reach enable us to offer the specific legal advice our clients need to compete most effectively in today's global business environment.

Asia With offices in Beijing, Hong Kong, Shanghai, Singapore and Tokyo, the firm is strategically positioned to handle matters for our clients throughout Greater China, India, Japan, Pakistan, South East Asia and South Korea. Our Tokyo office operates as a *gaikokuho kyodo jigyo* (foreign law joint enterprise), with *bengoshi* who are licensed to practice law and appear in Japanese courts. Our Hong Kong law practice was established in October 2005 to complement our existing U.S. law practice in Asia.

The firm's work in Asia focuses primarily on capital markets and bank finance transactions, direct investments, joint ventures, asset and stock acquisitions, and project financing transactions, including power project development and other infrastructure work, and real estate investments. Our attorneys have handled many public offerings involving the privatization of national telecommunications, power and other companies.

In "trailblazing" matters, Skadden has represented clients in the largest offering to date by an Indonesian concern — a deal that was also among the largest global Asian equity offerings outside of Japan, the first private power project in Indonesia, the first privatization by the Indonesian government, the first U.S. shelf registration by the People's Republic of China (PRC), the first registered public offering in the United States by the PRC and the first global stock offering of a Chinese company.

Australia and New Zealand With an office in Sydney, Skadden primarily represents Australian and New Zealand companies and their underwriters or financial advisors in U.S. and international capital markets transactions and cross-border mergers and acquisitions. We advise on U.S. law, international law and conflicts of law. Since the Sydney office opened in 1989, Skadden has participated in some of the largest debt and equity offerings, including U.S. stock exchange listings, and some of the most significant M&A transactions involving Australian and New Zealand companies.

Canada Skadden represents issuers and underwriters in cross-border public and private debt and equity offerings by Canadian entities in the securities markets of the United States, Europe and other areas of the world. Skadden also represents Canadian clients in Rule 144A offerings and advises on issues relating to the Canada/U.S. Multijurisdictional Disclosure System. Skadden acts as U.S. acquisition counsel to various Canadian public companies and advises on both hostile and friendly cross-border transactions. We also represent Canadian clients in areas such as banking and financial services, joint ventures, real estate, international trade, telecommunications, intellectual property and litigation.

Latin America The firm's practice in Latin America includes cross-border mergers and acquisitions, joint ventures, debt and equity financings, the privatization of government entities, trade regulation, private equity fund investments, telecommunications issues, tax matters and general business law advice. Skadden's experience involves industries ranging from telecommunications and energy to banking and insurance. Skadden was named Corporate/M&A Law Firm of the Year for International Counsel in Latin America at the Chambers Latin America Awards for Excellence 2011.

Israel Skadden has a substantial practice involving the representation of Israeli companies engaged in M&A, financing and other activities in the United States, as well as investors in Israeli companies. We have acted as counsel to underwriters and issuers in many financings by Israeli companies or entities with relationships to Israel, established funds to invest in Israeli companies and represented clients in litigation involving Israeli companies. A number of our attorneys are thoroughly familiar with the legal structure, business environment and political system in Israel, and several have been admitted to the bars of both Israel and New York and are fluent in Hebrew and English.

Africa We provide clients doing business in Africa with seamless legal services in more than 40 practice areas. While much of our experience has focused on the key markets of South Africa and Egypt, the firm has advised on transactions across the continent. We have lawyers who speak Arabic, Yoruba, Fula and Portuguese. We have worked with businesses and governments in Africa for more than 20 years and continue to be retained in high-profile matters, including our representing the world's newest country — South Sudan — in its oil sector negotiations with the Republic of Sudan and in production and transportation arrangements with the international oil companies operating there.

Financial Institutions Regulation and Enforcement The firm advises financial institutions and their investors on regulatory and antitrust considerations, and assists with applications in connection with mergers and acquisitions, joint ventures, and commercial and banking transactions. Skadden represents clients before the Federal Reserve Board, the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and other federal and state agencies. In addition, we advise clients on electronic banking, insurance, mutual funds, securities and related financial services. In the enforcement area, the firm has represented institutions in connection with government investigations and enforcement actions and related private class actions concerning bank secrecy laws, fair lending and securities.

Tax Skadden's Tax Group provides a wide array of services to a broad spectrum of clients. Our attorneys' primary areas of practice include counseling businesses and financial intermediaries in connection with domestic and international acquisitions, divestitures and reorganizations; financial products, including leasing, structured financings, hybrid entities and hybrid instruments; tax controversy matters, including audits, administrative appeals and litigation; international tax matters; and governmental and philanthropic organizations. Skadden was named North America Banking Tax Firm of the Year at the International Tax Review Americas Tax Awards, 2011.

Financial Institutions The firm represents U.S. and non-U.S. banks, thrift institutions and investment banks in negotiated and contested mergers and acquisitions, thrift conversions, restructurings, joint ventures and other transactions. We also advise public companies and their boards of directors and investors with respect to proxy contests and acquisitions of controlling stock positions. In addition, we handle recapitalization transactions involving banks and thrifts and have assisted institutions and investors in acquiring depository institutions from the FDIC and the Resolution Trust Corporation.

In the United States, we actively have been involved in litigation to stop imports of unfairly priced or subsidized goods. We also have been actively involved in trade litigations brought by foreign manufacturers and governments.

International Trade The firm advises U.S. and non-U.S. clients in international trade matters and litigation. In the United States, we represent major U.S. manufacturers as petitioners in litigation to stop imports of unfairly priced or subsidized goods. We also defend U.S. manufacturers in trade litigation brought by foreign manufacturers and governments in Mexico, Canada and other countries. Our attorneys in Washington, D.C., many of whom held positions in Congress and the executive branch, also represent U.S. clients in efforts to maintain fair trade laws and regulations domestically, and in negotiations and dispute-settlement proceedings under the North American Free Trade Agreement and before the World Trade Organization. In addition, we represent U.S. manufacturers and service providers seeking assistance to secure fair access to foreign markets.

International Banking We assist clients with the acquisition of, or establishment by, non-U.S. banks of subsidiaries and joint ventures engaged in nonbanking activities in the United States; the acquisition or establishment by non-U.S. banks of banks, branches, agencies, New York investment companies, Edge corporations and representative offices in the United States; investments and acquisitions by U.S. banks outside the United States; and the ongoing operations of international banks.

Political Law Our attorneys provide a wide range of legal services and advice, with particular emphasis on campaign finance, ethics and conflict of interest laws. Our work includes the representation of political committees and businesses involved in the political process, corporate political action committees, independent political committees and candidate committees. The firm has advised presidential campaigns and prominent federal, state and local candidates of both major parties. In addition, we have counseled clients before the Federal Election Commission and state election commissions.

Legislative The firm's Washington, D.C.-based attorneys and legislative specialists monitor legislative developments and lobby on behalf of clients, as well as implement legislative strategies for corporations, investment banks and coalitions.

Many Skadden attorneys apply the knowledge and experience gained from prior government service to their current work. The following government positions are among those formerly held by our lawyers:

U.S. Federal Government

The White House
- Assistant to the President and Special Counsel (Clinton)
- Associate Counsel to the President (Clinton)
- Counsel (Obama)
- Legal Adviser (George W. Bush)

Commodity Futures Trading Commission
- Assistant General Counsel
- Legal Counsel to the Commissioner

Congress
- Legislation Counsel, Joint Committee on Taxation
- Tax Counsel to a Member of the House Ways and Means Committee

Department of Defense
- Judge Advocate, U.S. Air Force

Department of Energy
- Assistant General Counsel
- Chief of Staff and Special Assistant to the Secretary
- Deputy Administrator, Economic Regulatory Administration

Department of Justice
- Acting Assistant Attorney General, Antitrust Division
- Assistant to the Solicitor General
- Associate Deputy Attorney General, Special Counsel for Health Care Fraud
- Chief, Environmental Defense Section, Land and Natural Resources Division
- Chief, General Litigation Section, Land and Natural Resources Division
- Chief, Securities and Commodities Fraud Task Force, Southern District of New York
- Deputy Assistant Attorney General, Antitrust Division
- Deputy Assistant Attorney General, Tax Division
- Deputy Chief, General Crimes Section, Central District of California
- Principal Deputy General Counsel and Special Assistant to the Director, FBI
- U.S. Attorney, Connecticut
- Acting U.S. Attorney, Massachusetts
- First Assistant U.S. Attorney, Massachusetts
- U.S. Attorney, New Jersey

Department of the Treasury
- Assistant Secretary for Tax Policy
- Chief Counsel, Office of Foreign Assets Control
- International Tax Counsel
- Assistant Chief Counsel (Income Tax & Accounting), IRS
- Associate Chief Counsel, IRS
- Commissioner, IRS
- Chief Counsel, IRS
- Director (International), IRS
- Director of Technical Service, Appeals Division, IRS
- National Chief of Appeals, IRS
- Special Assistant to the Chief Counsel, IRS

Department of State
- Director of Policy Planning

Federal Election Commission
- Associate General Counsel

Federal Energy Regulatory Commission
- Chief of Staff
- Commissioner
- Deputy Secretary
- General Counsel
- Senior Legal and Policy Adviser

Federal Reserve System
- Attorney, Board of Governors

Food and Drug Administration
- Associate Chief Counsel

Office of the U.S. Trade Representative
- Deputy U.S. Trade Representative

Office of the Independent Counsel
- Associate Independent Counsel, Iran-Contra Investigation

Securities and Exchange Commission
- Acting General Counsel
- Assistant Director, Division of Enforcement
- Deputy Director, Division of Enforcement
- Deputy Director, Division of Corporation Finance

Senate
- Chief Counsel (Majority Leader Trent Lott)
- Democratic Chief Counsel and Staff Director, Committee on Commerce, Science and Transportation
- Legislative Director (Sen. Lloyd Bentsen)
- Senior Adviser on Defense, Foreign Policy and National Security (Sen. Edward Kennedy)
- Senior Counsel, Committee on Commerce, Science and Transportation

U.S. State Governments
- Deputy Attorney General, Delaware
- Securities Commissioner, Delaware
- Chief of Trial Division, Public Defender Service, District of Columbia
- Assistant Attorney General and Chief, Special Litigation Bureau, Illinois
- Attorney General, New Jersey
- Assistant Attorney General, Virginia

Judiciary
- Chief Judge, New York Court of Appeals
- Judge, U.S. District Court for the Southern District of New York
- Judge, New York Supreme Court
- Judge, Appellate Division of the Supreme Court and the Court of Appeals
- Judge, U.S. Tax Court

International Governments
- Case Controller, Serious Fraud Office (U.K.)
- Deputy Director, International Markets, Ontario Securities Commission (Canada)
- Regulator, Financial Services Authority (U.K.)

Regulatory/ Legislative

Communications Skadden advises licensees, investors, lenders, governments and customers in the areas of telecommunications services and equipment, mobile communications services, television and radio broadcasting, satellite services, cable television systems, and program production. In addition to traditional corporate and transactional advice, we analyze options and develop positions on issues for clients in regulatory policymaking and licensing proceedings before the Federal Communications Commission, state legislatures and agencies, the U.S. Congress and executive branch departments, and foreign governments. We also counsel governments, bidders and investment banks in the privatization of non-U.S. telecommunications systems and new licensings.

Energy We represent energy producers, transporters, marketers, distributors and users worldwide. The firm has been particularly active in the development and financing of electric power projects throughout the world; complex oil and gas litigation; utility mergers, acquisitions and restructurings; pipeline certification and rate-making proceedings; and privatizations of major energy-related companies. Our attorneys provide clients with a full range of legal services — such as corporate, project finance, government regulatory, litigation and legislative — relating to oil, natural gas, electric power and other energy sources. Skadden received the Chambers USA Award for Excellence for "Energy/Projects: Power Team of the Year" for both 2012 and 2011. We also were named among *Law360*'s Energy Groups of 2012 and Project Finance Groups of 2011.

Environmental Our practice involves litigation in federal and state courts and in administrative proceedings. Skadden attorneys have handled the defense of environmental civil penalty and criminal cases, lawsuits involving disputes over environmental contract terms, cost recovery actions under Superfund, natural resource damage, and other cases involving environmental statutes. We also provide regulatory counseling. Our attorneys negotiate environmental contract provisions and conduct due diligence audits in connection with mergers, acquisitions and project financings — both within and outside the United States. We also advise on international environmental and trade issues.

Gaming Skadden represents companies and investment banks involved in the financing, acquisition, restructuring, development and management of some of the largest projects in the gaming industry. Our attorneys advise issuers, underwriters and investors in every variety of gaming financing, including public and private transactions, high-yield and investment-grade debt offerings, initial public offerings and secondary equity sales. The firm has handled numerous transactions involving land-based, riverboat and dockside casinos in established and emerging casino gaming markets within the United States and abroad.

Health Care The attorneys in our Health Care Group represent hospitals and other health care service providers, pharmaceutical and biotechnology firms, medical device and equipment manufacturers, and companies in related businesses in mergers and acquisitions, joint ventures, public and private offerings of debt and equity securities, and venture capital transactions. We also advise health care clients in the areas of licensing, intellectual property, products liability and tax, as well as on a broad range of general corporate, securities law and litigation matters.

Skadden has been extensively involved in matters related to professional sports, representing the four major sports leagues — the National Football League, the National Basketball Association, the National Hockey League and Major League Baseball.

Information Technology and E-Commerce We handle a wide variety of matters that relate to the creation, use, licensing and transfer of information technologies, ranging from small one-time license agreements to technology joint ventures to multiparty global outsourcing deals. The cornerstone of our practice is that we understand the technical and business issues that arise in connection with such transactions. As a result, we work with chief technology officers to develop service level agreements for enterprise-wide systems; product managers to determine the appropriate pricing metrics for cross-license agreements; and in-house counsel to draft comprehensive strategic alliances. Our multifaceted approach to technical, business and legal issues allows us to be a value-add to any

transaction in which we are involved. Our client base is comprised of both the providers and users of information technology. On the provider side, we represent software developers, outsourcers, content providers, domain name registries and registrars, infrastructure and network providers, and application service providers. On the user side, we represent companies that utilize technology in a wide variety of industries, including financial services, transportation, manufacturing, publishing, entertainment and retail. Because of this diverse client base, we view the industry from varied perspectives and thereby help our clients understand the strategic interest of the other side during negotiations.

In addition to "traditional" outsourcing of information technology services, companies are outsourcing many of their internal functions and business processes. Skadden's Outsourcing Group, which is part of the information technology and e-commerce practice area, handles this wide variety of outsourcing transactions. We have represented both the customer and the vendor, and therefore understand the strategic issues that arise from both sides of a transaction.

Insurance Skadden's Insurance Group represents insurance and reinsurance companies and their financial advisors and underwriters in a wide variety of corporate transactions, including mergers and acquisitions, public and private financings, restructurings and reorganizations. In the area of corporate finance, our Insurance Group has handled numerous transactions for life, health, disability, workers' compensation, property and casualty, and financial guaranty insurance companies. Such transactions have included some of the largest initial public offerings of insurance companies to date, as well as numerous other offerings, including surplus note offerings for a number of mutual life insurers.

Life Sciences Skadden has extensive experience representing life sciences companies and the investment banks that finance and advise them. We have represented clients in biopharmaceuticals, biotechnology, medical devices, diagnostics, genomics, drug delivery, genetics and other areas in the life sciences industries. Our experience spans the industry from advising large international pharmaceutical companies looking to consolidate or expand in an increasingly globalized marketplace to assisting small biotechnology companies seeking to develop their first lead compounds.

Real Estate The firm represents developers, lenders, investment banks, and U.S. and non-U.S. investors. Our activities include work on the purchase, sale, construction, financing and operation of commercial, industrial, residential and retail projects throughout the United States, Europe and Japan; the public and private offering of various types of real estate securities; leasing on behalf of landlords and major tenants; real estate-secured lending; land use and other regulatory matters; real estate litigation; and restructurings on behalf of lenders, borrowers and joint venturers. We received the 2012 Chambers USA Award for Excellence for "Real Estate Team of the Year."

Sports Skadden has been extensively involved in matters related to the professional sports industry, representing the four major sports leagues — the National Football League, the National Basketball Association, the National Hockey League and Major League Baseball — as well as individual team franchises and related entities. The attorneys in our Sports Group have significant experience in sports-related matters involving litigation, antitrust, labor relations and intellectual property, and have participated in a number of landmark cases. We have also assisted clients involved in the purchase and sale of professional sports franchises and have had a prominent role in financing new stadiums and arenas for numerous sports teams.

Utilities The firm's clients include electric and gas utilities, utility holding companies and investment banks. Our representations involve mergers, corporate reorganizations, proxy fights, acquisitions and dispositions, and derivative litigation and regulatory proceedings related to these transactions. We counsel clients with respect to general defensive advice, holding company reorganizations, restructurings and strategic evaluation of potential acquisitions in the utility industry. We also represent electric and gas utilities in regulatory proceedings and litigation dealing with a wide range of nonmerger-related issues.

Employment Issues and Advice to Individuals

Executive Compensation and Benefits Skadden's attorneys advise corporate and individual clients on employee benefits, ERISA matters and executive compensation. The practice covers tax-qualified pension and profit sharing plans, stock option plans, employee stock ownership plans, executive and employee incentive arrangements, employment contracts and employee welfare benefit plans, as well as matters arising under ERISA, the federal securities laws and other related areas.

Labor and Employment Law The firm represents and advises clients on labor and employment matters arising in representation proceedings, collective bargaining negotiations, arbitrations, litigation in federal and state courts, and administrative proceedings before such government agencies as the National Labor Relations Board, the Equal Employment Opportunity Commission, the U.S. Department of Labor, state human rights agencies, and state departments of labor. We also work on matters involving employment-at-will and claims of employment discrimination, including claims of sexual harassment and wrongful discharge. In addition, we advise on all labor and employment aspects of transactions, including the negotiation of new collective bargaining agreements or the assumption of existing agreements as well as the preparation of employment and severance agreements. We also have handled the labor aspects of bankruptcy proceedings, including the representation of companies before various state departments of labor.

Trusts and Estates Our attorneys provide clients with in-depth planning, including the preparation of wills and trusts; the designation of beneficiaries of insurance and employee death benefits; and the analysis of the estate, gift and income tax consequences of an estate plan. Estate plans may also include the creation of insurance trusts, charitable dispositions, personal holding companies and family partnerships.

Pro Bono Matters Skadden Arps strongly encourages its lawyers, legal assistants, and summer associates to assist, through *pro bono* work, those individuals and groups unable to afford legal services. The firm is a charter signatory to the Law Firm *Pro Bono* Challenge, pledging to commit time equivalent to at least three percent of our annual billable hours to work on *pro bono* matters. Skadden attorneys — both litigators and nonlitigators — represent individuals and organizations of limited means in matters including:

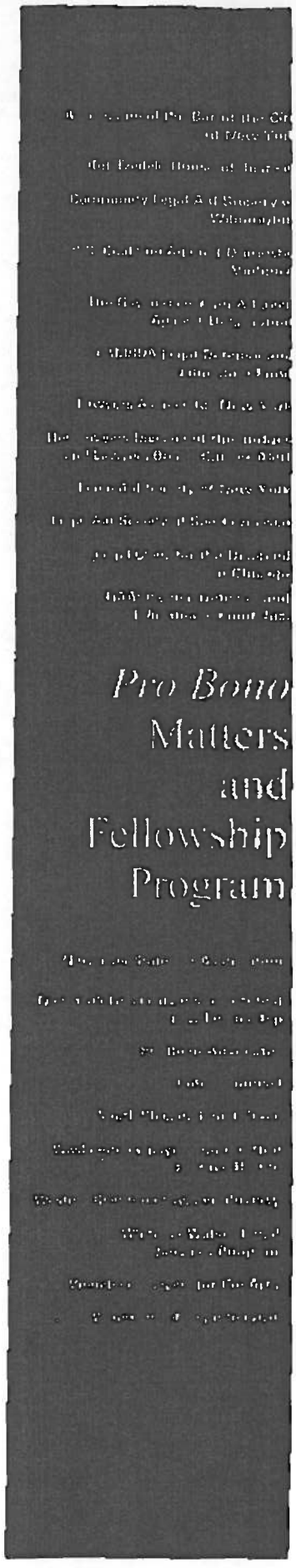
- not-for-profit incorporations and securing tax-exempt status
- Social Security disability claims
- housing issues;
- the preparation of wills and guardianship and adoption petitions
- civil rights claims;
- real estate projects involving ownership for low-income tenants
- criminal appeals
- battered women's issues
- unemployment cases;
- microentrepreneurs
- political asylum and immigration matters;
- uncontested divorces;
- children's issues; and
- senior citizens' issues

Externships are available in various offices. The New York office offers an externship program with the Legal Aid Society's Community Law Office as well as one with the Lawyers Alliance for New York. Externships are four-month rotations (*i.e.*, an associate works with one of the organizations full time for four months). Once the rotation concludes, the associate returns to the firm and is replaced by the next rotating attorney. The Washington, D.C. office has a six-month rotation with the local Legal Aid Society.

These externships are designed not only to help people with limited means and the work of not-for-profit groups during the actual externship period, but also to improve our ongoing *pro bono* program by providing us — following each extern's return to the firm — with more attorneys with hands-on experience in handling various types of *pro bono* matters. Moreover, it is anticipated that externs may receive assistance on some matters during their externships by other attorneys or legal assistants at the firm.

Our attorneys also counsel nonprofit charitable and cultural organizations, and handle post-conviction representations in death penalty cases. The firm's *pro bono* achievements have been nationally recognized and are reflected in the awards that we have received from various nonprofit organizations.

Fellowship Program Since 1988, Skadden has annually awarded funds to a select group of the nation's most outstanding law school graduates and judicial clerks to practice public interest law for a two-year period through the Skadden Fellowship Foundation. The Fellowship Program, established to reaffirm the firm's commitment to public interest law, has received widespread praise and recognition. Approximately 90 percent of program graduates have continued in the public service sector, leading organizations devoted to providing equal access to the justice system. Many former Skadden Fellows are now teaching, or have taught, at the top law schools across the country, and several individuals have accepted positions as U.S. assistant attorneys general. In 2010, the *Financial Times* named Skadden the top law firm in its inaugural "U.S. Innovative Lawyers" report, where the firm placed in the top tier for Responsible Business in connection with the Skadden Fellowship Foundation.



Firm/Affiliate Offices

Four Times Square
New York, New York 10036
Telephone: 212.735.3000
Fax: 212.735.2000
Contact: Eileen T. Nugent

One Beacon Street
Boston, Massachusetts 02108
Telephone: 617.573.4800
Fax: 617.573.4822
Contact: Margaret A. Brown

155 North Wacker Drive
Chicago, Illinois 60606
Telephone: 312.407.0700
Fax: 312.407.0411
Contact: Brian W. Duwe

1000 Louisiana
Suite 6800
Houston, Texas 77002
Telephone: 713.655.5100
Fax: 713.655.5200
Contact: Charles W. Schwartz

Los Angeles
300 South Grand Avenue
Los Angeles, California 90071
Telephone: 213.687.5000
Fax: 213.687.5600
Contact: Brian J. McCarthy

525 University Avenue
Palo Alto, California 94301
Telephone: 650.470.4500
Fax: 650.470.4570
Contact: Ken J. King

Washington, D.C.
1440 New York Avenue, N.W.
Washington, D.C. 20005
Telephone: 202.371.7000
Fax: 202.393.5760
Contact: Clifford (Mike) M. Naeve

Wilmington
One Rodney Square
920 N. King Street
Wilmington, Delaware 19801
Telephone: 302.651.3000
Fax: 302.651.3001
Contact: Edward P. Welch

30/F, China World Office 2
No. 1, Jian Guo Men Wai Avenue
Beijing 100004 China
Telephone: 86.10.6535.5500
Fax: 86.10.6535.5577
Contact: Peter X. Huang

523 avenue Louise
Box 30
1050 Brussels, Belgium
Telephone: 322.639.0300
Fax: 322.639.0339
Contact: James S. Venit

An der Welle 3
60322 Frankfurt am Main
Germany
Telephone: 49.69.742200
Fax: 49.69.74220300
Contact: Bernd R. Mayer

Hong Kong
42nd Floor, Edinburgh Tower
The Landmark
15 Queen's Road Central
Hong Kong
Telephone: 852.3740.4700
Fax: 852.3740.4727
Contacts: Alan G. Schuffman
Jonathan B. Stone

40 Bank Street
Canary Wharf
London, E14 5DS, England
Telephone: 44.20.7519.7000
Fax: 44.20.7519.7070
Contact: Bruce M. Buck

Ducat Place III
6 Gasheka Street, 11th Floor
Moscow, Russia 125047
Telephone: 7.495.797.4600
Fax: 7.495.787.4601
Contacts: Bruce M. Buck
Pranav L. Trivedi

Karl-Scharnagl-Ring 7
80539 Munich
Germany
Telephone: 49.89.2444950
Fax: 49.89.244495300
Contact: Walter R. Henle

68, rue du Faubourg Saint-Honoré
75008 Paris, France
Telephone: 331.55.27.11.00
Fax: 331.55.27.11.99
Contact: Pierre Servan-Schreiber

Av. Brigadeiro Faria Lima, 3311 - 7º andar
Itaim Bibi - CEP 04538-133
São Paulo, SP
Brazil
Telephone: 55.11.3708.1820
Fax: 66.11.3708.1846
Contacts: Richard S. Aldrich Jr.
Paul T. Schnell

Plaza 66, Tower 1
36th Floor
1266 Nanjing West Road
Shanghai 200040, China
Telephone: 86.21.6193.8200
Fax: 86.21.6193.8299
Contact: Gregory G.H. Miao

Singapore
6 Battery Road
Suite 23-02
Singapore 049909
Telephone: 65.6434.2900
Fax: 65.6434.2988
Contact: Rajeev P. Duggal

Level 13, 131 Macquarie Street
Sydney, NSW 2000, Australia
Telephone: 61.2.9253.6000
Fax: 61.2.9253.6044
Contact: Adrian J. S. Deitz

Izumi Garden Tower
21st Floor
1-6-1 Roppongi
Minato-ku, Tokyo 106-6021
Japan
Telephone: 813.3568.2600
Fax: 813.3568.2626
Contacts: Nobuhisa Ishizuka
Skadden Arps Law Office
Mitsuhiro Kamiya

222 Bay Street
Suite 1750, P.O. Box 258
Toronto, Ontario
Canada M5K 1J5
Telephone: 416.777.4700
Fax: 416.777.4747
Contact: Christopher W. Morgan

Schwarzenbergplatz 6
A-1030 Vienna, Austria
Telephone: 43.1.710 77 300
Fax: 43 1 710.77.303
Contact: Rainer K. Wachter

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Exhibit

5

U.S. Department of Justice

National Security Division

Washington, DC 20530

APR - 9 2013

Gregory B. Craig, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, NW
Washington, DC 20005-2111

Re: Possible Obligation to Register Pursuant to the Foreign Agents Registration Act

Dear Mr. Craig:

This will acknowledge receipt of your letter of February 6, 2013, and enclosures responding to our letter of December 18, 2012, concerning your firm's possible obligation to register pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (FARA or the Act). We have reviewed the materials, and need additional information to determine whether your firm is obligated to register under the Act.

As you know, Judge Kireyev of the Pechersky District Court of Kyiv convicted Yulia Tymoshenko of exceeding her authority and violating Ukrainian law. She was a popular political figure for many years and had campaigned unsuccessfully against Victor Yanukovich for President of the Ukraine. After he won the election, she was charged criminally with exceeding her authority while negotiating a gas deal with Russia. The agreement in issue was reached with Gazprom, owned by the Russian Government and also a client of your firm. After her conviction, Tymoshenko was sentenced to prison for seven years. She is appealing her conviction to the European Court of Human Rights. She maintains, among other things, that her prosecution was motivated by politics to silence her as a principal opponent of the Yanukovich regime. Recently, she was charged with tax evasion and embezzlement, and she has been named as a suspect in a murder case. She currently awaits further court proceedings in the Ukraine.

On April 10, 2012, your firm signed a contract with the Ministry of Justice of Ukraine to study the Tymoshenko criminal case and "the events leading up to and including her prosecution and trial..."[1] The contract indicates that the study "must fully and objectively reflect European and American standards and practice with respect to rule of law,"[2] and must include "specific features of the particular case considered before the European Court of Human Rights."[3] Under the contract your firm will bill the Ukraine at 100.00 Ukrainian hryvnas per hour. The time spent on this contract by your firm is not to exceed 950 hours, and the fee for your firm's work will be 95,000 Ukrainian hrynyas. This is equivalent to $11,675.02 U.S. dollars.

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[1] The Tymoshenko Case, Skadden Arps Slate Meagher § Flom LLP, Executive Summary, at 1.
[2] Contract of April 10, 2012, between the Ukrainian Ministry of Justice and Skadden Arps Slate Meagher & Flom LLP, at § 2.1.
[3] Id.

It is unclear to us from the contract and supporting documentation how much additional money your firm charged the Ukrainian Government to perform this work. In addition to the April 10, 2012, contract for 95,000 Ukrainian hryvnas to be paid by the Ukrainian Ministry of Justice, your firm signed a Retainer Memorandum with the Government of Ukraine's Ministry of Justice on the same date. The agreement was incorporated by reference into the original contract. The fees and out of pocket expenses of the firm were to be charged by the firm to the Ministry of Justice. These would offset against a retainer which had been paid to the firm.[4] No mention is made of how much money the retainer amounted to and who paid it. A February 4, 2013, letter from the firm to the Ukrainian Ministry of Justice mentioned the increased cost of services and expenses owed to your firm for this project. Furthermore, with respect to the financing of the study please advise this office of the amount of money paid by the private citizen to your firm as mentioned in your letter of February 6, 2012, the name of the individual, as well as the individual's connection to your work for the Ukrainian Ministry of Justice. In addition, please list any other sources of money for the Tymoshenko work.

On January 14, 2013, Arnall Golden Gregory and Tauzin Consultants LLP registered as foreign agents for foreign principal, Dmitry Shpenov, a member of the Ukrainian parliament and the Party of Regions. Both of these foreign agents claimed in Attachment A that they will be "[a]dvocating for and advising the foreign principal with respect to advocacy efforts and alerting Congress and the Administration about economically disadvantageous policies, which detrimentally affected the State of Ukraine and the Ukrainian people as the result of the former Ukrainian government ..." Accompanying the FARA registration were informational materials, which included a copy of an indictment from the Northern District of California against Pavel Ivanovich Lazarenko, a former Ukrainian Prime Minister who is allegedly connected to Yulia Tymoshenko, and the executive summary of your firm's Tymoshenko report. The agents state they will contact "Members of Congress, congressional staff, and Obama Administration officials and employees."

We would appreciate your firm addressing the following questions relating to the report to assist this office in determining your firm's possible obligation under FARA. (1) To whom, if anyone, did your firm release or distribute the report and when? (2) When was the report released to the Ukrainian Ministry of Justice? (3) Did your firm give the report to the Los Angeles Times? (4) Did your firm know that Arnall Golden Gregory or Tauzin Consultants would be agents of Dmitry Shpenov in advocating in the United States for the Ukraine? (4) Because your firm was aware of the requirements of FARA and mentioned that it would not engage in any political activity in connection with the Tymoshenko case, what safeguards or agreements, if any, did your firm have with the Ukrainian Ministry of Justice about limiting the use of this report in the United States? (5) What was your firm's understanding of what would happen to the report when it was released to the Ukrainian Ministry of Justice? (6) Did you or anyone in your firm have any media interviews or comments to the media, public, or government officials about the report and the findings of your firm?

[4]Retainer Memorandum of April 10, 2012, at 2.

If you have any questions, please call me at (202) 233-0776.

Sincerely,

Heather H. Hunt, Chief
Registration Unit
Counterespionage Section
National Security Division

Exhibit 6

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000
FAX: (202) 393-5760
www.skadden.com

FIRM/AFFILIATE OFFICES

BOSTON
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MUNICH
PARIS
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SHANGHAI
SINGAPORE
SYDNEY
TOKYO
TORONTO
VIENNA

June 3, 2013

Heather H. Hunt, Chief
Registration Unit
Counterespionage Section
National Security Division
U.S. Department of Justice
600 E Street, NW
Washington, DC 20530

Re: Response to April 9, 2013 Letter from National Security Division, US Department of Justice

Dear Ms. Hunt:

The purpose of this letter is to reply to the questions in your letter of April 9, 2013.

Let me just say at the outset that, throughout the period of our work for the Ministry, our assignment was to provide legal services to the Ministry by conducting an independent examination of the Tymoshenko matter applying western legal standards. We performed this function in our capacity as experienced lawyers and independent experts on the rule of law. At no time were we serving as the Ministry's agent in the United States.

You should also know that, throughout the period of our work for the Ministry, we were in this respect completely transparent, *i.e.*, we told everyone who was involved in the project that we had been retained by and were working for the Ministry of Justice of Ukraine in conducting this independent examination of the events that occurred in Ukraine. As you know from reading the report, the report is sharply critical of many aspects of the prosecution and concludes that, on various grounds, Ms. Tymoshenko's conviction likely would be reversed under western legal standards.

In the first paragraph on page two of your letter, you ask us to tell you the amount of money paid by the private citizen to Skadden, the name of the individual and the individual's connection to your work for the Ukrainian Ministry of Justice. The Ministry has asked that we not disclose the name of this individual or the amount of his contribution if possible. The private citizen's strong preference is the same, *i.e.*, to remain anonymous and not to disclose the amount of his funding. We do not believe that we engaged in conduct requiring us to register under FARA, and, respectfully, we therefore do not believe that you are entitled to such information. If you

conclude that we are required to register, or if, for some reason, you believe that such information is material to your inquiry, please let us know so that we may consider and understand your request in the context of your analysis of this issue. As to this individual's "connection to our work," other than providing financial assistance to help fund the project, this individual had no connection to the project whatsoever, either professionally or personally, and to our knowledge was not involved in any way with the work that we did.

In the following numbered paragraphs, we respond to your other questions as they appear in paragraph 3 of page two of your letter.

(1) To whom, if anyone, did your firm release or distribute the report and when?

In addition to giving the report to representatives of the Government of Ukraine, the law firm on December 12-13, 2012 provided a copy of the report (1) to Ms. Tymoshenko's legal team in Ukraine, and to a member of her legal team in the United States, James Slattery (in response to his request); (2) to a representative of the individual in Ukraine who helped fund the project (the representative was Doug Schoen); (3) to David Sanger of the New York Times; (4) to Matthew Huisman of the National Law Journal; and (5) to Emily Alpert of the Los Angeles Times.

(2) When was the report released to the Ukrainian Ministry of Justice?

The law firm completed the report and provided the final draft of the report to the Government of Ukraine in September 2012. The Ministry of Justice released the report on December 12-13, 2012.

(3) Did your firm give the report to the Los Angeles Times?

Yes.

(4) Did your firm know that Arnall Golden Gregory or Tauzin Consultants would be agents of Dimitry Shpenov in advocating in the United States for the Ukraine?

No. We have never heard of these individuals. To our knowledge, we have never met these individuals, never communicated with them or had any contact with them. We were – and are – unaware of their existence and had nothing to do with them.

(4)*[sic]*Because your firm was aware of the requirements of FARA and mentioned that it would not engage in any political activity in connection with the Tymoshenko case, what safeguards or agreements, if any, did your firm have with the Ukrainian Ministry of Justice about limiting the use of this report in the United States?

The law firm had no agreement with the Ministry of Justice of Ukraine about limiting distribution of this report. There was a clear understanding, however, that the law firm would not be involved in any activities that would require us to register as a foreign

agent. Again, we understood our role to be that of lawyers conducting an independent examination of the events in Ukraine. See also the answer to Question 5.

(5)*[sic]* What was your firm's understanding of what would happen to the report when it was released to the Ukrainian Ministry of Justice?

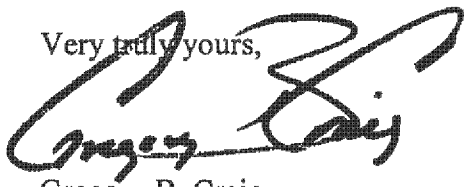
The law firm was aware that the Ministry of Justice was considering various ideas about what to do with the report. It was the law firm's understanding that the Ministry's decision about how to handle the report would not be made until after the report was completed and after the Ministry had seen it. The law firm viewed the distribution of the report as a matter that would be decided by the Ukraine Government in its sole discretion. The law firm did not advise the Ministry on that issue.

(6)*[sic]* Did you or anyone in your firm have any media interviews or comments to the media, public, or government officials about the report and the findings of your firm?

The law firm issued no statements and made no comments to the media, the public or government officials about the report. Gregory Craig provided brief clarifying statements about the report to David Sanger of the New York Times, to Emily Alpert of the Los Angeles Times and to Matthew Huisman of the National Law Journal. One purpose of the statements was to correct misinformation that the media had received – and was reporting – from the Ministry of Justice and from the Tymoshenko legal team in Ukraine. Neither the law firm nor its lawyers sought to influence American public opinion or US government policy.

To supplement our response to your earlier inquiry about agreements with Ukraine, I am attaching a signed copy of the English language version of our initial agreement with Ukraine and the copy of a more recent agreement – in English and in Russian – reflecting Ukraine's undertaking with respect to final payment.

Very truly yours,



Gregory B. Craig

Encls.

ДОГОВІР 11-03/2013 **CONTRACT**

м. Київ
«11» 03 **2013р.**

Kyiv
«11» 03 **2013р.**

Міністерство юстиції України в особі заступника Міністра юстиції – керівника апарату Сєдова Андрія Юрійовича, що діє на підставі Положення про Міністерство юстиції України, затвердженого Указом Президента України від 6 квітня 2011 року № 395/2011 (далі – Замовник), з однієї сторони,

та

Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates (далі – Виконавець), з іншої сторони, разом – Сторони,

уклали цей договір про таке (далі – Договір):

The Ministry of Justice of Ukraine acting on the basis of the Regulation on the Ministry of Justice of Ukraine approved by the Decree of the President of Ukraine of April 6, 2011 No 396/2011, represented by Andriy Yuriyovych Sedov (hereinafter referred to as **the Employer**), on one hand

and

Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates (hereinafter referred to as **the Executor**), on the other hand,

hereinafter jointly referred to as **the Parties**,

have concluded the following Contract (hereinafter referred to as **the Contract**):

1. Предмет Договору

1.1. Виконавець зобов'язується передати Замовникові послуги з дослідження у галузі права (ДК 016-2010 - 72.20.10), а саме послуги щодо наукового дослідження та експериментального розроблення у сфері суспільних наук щодо дотримання принципу верховенства права (далі – Послуги), а також звіт, який описаний в п.5.3. а Замовник – прийняти і оплатити такі Послуги.

1.2. Обсяги закупівлі послуг здійснюються залежно від реального фінансування видатків та потреб замовника.

1. Subject of the Contract

1.1. The Executor shall deliver services on legal studies (ДК 016-2010 - 72.20.10) to the Employer that include services on scientific studies and experimental elaboration in the field of social science on the rule of law (hereinafter referred to as **the Services**), as well as a report which is described below in clause 5.3 to and the Employer shall accept and pay for such Services.

1.2. The scope of procurement of the Services shall be made depending on actual funding of the Employer's expenses and needs.

2. Якість послуг

2.1. Виконавець повинен надати Замовнику послуги, якість яких відповідає умовам:

- результат дослідження повинен у повному обсязі незалежно та об'єктивно відображати Європейські та Американські стандарти та практику

2. Quality of the Services

2.1. The Executor shall provide the Employer with the Services whose quality is to meet the following condition:

- findings of the study must fully and independently and objectively reflect European and American standards and practice with respect to rule of law.

щодо дотримання принципу Верховенства права.

3. Ціна Договору

3.1. Ціна цього Договору становить 10 200 **000,00 грн.** (Десять мільйонів двісті тисяч грн. 00 коп.) без ПДВ.

3.2. Кінцева вартість послуг буде визначена виходячи з кількості витрачених годин та вартості однієї години, яка розраховується на підставі стандартних тарифів Виконавця.

3.3. Виконавець веде облік витраченого часу для здійснення дослідження. На основі цих даних Виконавець складає Звіт та направляє його Замовнику. Звіт має містити детальний опис послуг, на які витрачено час.

3.4. Ціна цього Договору може бути зменшена за взаємною згодою Сторін.

4. Порядок здійснення оплати

4.1. Розрахунки проводяться шляхом перерахування Замовником коштів на розрахунковий рахунок Виконавця після пред'явлення Виконавцем рахунка на оплату послуг (далі – рахунок) за наявності коштів на розрахунковому рахунку Замовника.

4.2. Оплата за виконані послуги здійснюється після підписання акта прийому-передачі наданих послуг..

5. Надання послуг

5.1. Офіційний строк передачі звіту за цим Договором починається з 01 березня 2013 року і має бути завершено до 31 грудня 2013 року згідно з порядком, наведеним нижче.

5.2. Замовник передає Виконавцеві копії матеріалів справи стосовно якої необхідно провести дослідження та яка знаходить на розгляді Європейського суду із переліком питань, які підлягають дослідженню.

3. Price of the Contract

3.1. The price of the present Contract shall be 10 200 000, 00 (ten million two hundred thousand) Ukrainian hryvnyas, VAT excluded.

3.2. The final price of the Services shall be **determined in accordance with the number of hours worked and the hourly rate which is calculated according tothe basic rates of the Executor.**

3.3. The Executor shall keep accounting of hours expended to carry out the study. Based on those data, the Executor shall draw up the Report and submit it to the Employer. The Report shall contain the detailed description of the services time had been expended in.

3.4. The price of the present Contract may be reduced by mutual consent of the Parties.

4. Payment procedure

4.1. The payment shall be made by the Employer by way of bank transfer to the bank account of the Executor upon presentation by the Executor of the bill for services (hereinafter referred to as **the bill**) subject to availability of the funds on the bank account of the Employer.

4.2. Payment for services shall be made after signing the statement of transfer and acceptance of the services delivered.

5. Provision of services

5.1. The official delivery of the report under the present contract shall occur between 1st March 2013 and 31 December 2013, in accordance with the procedure set out below.

5.2. The Employer shall submit to the Executor the copy of the case-file which is to be analysed and which is being considered before the European Court of Human Rights, together with the list of questions to be studied.

5.3. Виконавець передає незалежний звіт , який ґрунтується на аналізі фактів та обставин, пов'язаних з обвинуваченням та судовим розглядом справи колишнього прем'єр-міністра Юлії Тимошенко в контексті Західних стандартів дотримання принципу верховенства права. .

Сторони розуміють, що звіт було підготовлено в 2012 році.

5.4. Місце надання послуг: Міністерство юстиції України, м. Київ, вул. Городецького, 13.

6. Права та обов'язки сторін

6.1. Замовник зобов'язаний:

6.1.1. Надати Виконавцеві копії матеріалів справи, а також перелік питань, які необхідно дослідити.

6.1.2. Приймати надані послуги згідно з актом прийому-передачі наданих послуг (якщо надані послуги відповідають умовам цього Договору).

6.1.3. Своєчасно та в повному обсязі сплачувати за надані послуги;

6.2. Замовник має право:

6.2.1. Контролювати надання послуг у строки, встановлені цим Договором. Здійснювати перевірку якості дослідження та відповідності дослідження вимогам, встановленим у п. 2.1.

6.2.2. Достроково розірвати Договір та вимагати відшкодування збитків у разі, якщо надання Виконавцем послуг у строк, передбачений цим договором, стає явно неможливим, або ж якщо під час надання послуг стане очевидним, що вони не будуть надані належним чином або на відповідному рівні.

6.2.3. Зменшувати обсяг закупівлі надання послуг та загальну вартість цього Договору залежно від реального фінансування видатків. У такому разі Сторони вносять відповідні зміни до цього Договору;

6.2.4. Повернути рахунок Виконавцю без здійснення оплати в разі неналежного оформлення документів (відсутність печатки, підписів тощо).

5.3. The Executor shall deliver an independent report on the evidence and procedures used during the prosecution and trial of former Prime Minister Yuliya Tymoshenko, applying Western standards of due process and rule of law.

The Parties understand that the work on the report was completed in 2012.

5.4. The Service location shall be the Ministry of Justice of Ukraine, City of Kyiv, 13 Horodetskogo St.

6. Rights and obligations of the Parties

6.1. The Employer shall:

6.1.1. Submit copies of case-files together with the list of questions to be studied to the Executor.

6.1.2. Accept the services made according to the statement of transfer and acceptance of the services delivered (if the services delivered comply with the conditions of the present Contract).

6.1.3. Pay for services delivered timely and in full;

6.2. The Employer shall have the right to:

6.2.1. Check that the services are provided within the time-limits established by the present Contract, verify the quality of the study and its compliance with the requirements set out in § 2.1.

6.2.2. Terminate ahead of schedule the present Contract and require payment of damage in the case if provision of services by the Executor within the time-limits established by the present Contract becomes clearly impossible or if during provision of the services it becomes quite clear that they are not going to be provided properly or at the adequate level.

6.2.3. Reduce the scope of procurement of services and the price of the present Contract depending on actual funding of the expenses. In such an event the Parties shall make relevant amendments to the Contract;

6.2.4. Return the bill to the Executor without making payment in the case of improper drawing up of documents (absence of the seal, signatures etc.).

6.3. Виконавець зобов'язаний:

6.3.1. Забезпечити надання послуг у строки, встановлені цим Договором;

6.3.2. Забезпечити надання послуг, якість яких відповідає умовам, встановленим розділом 2 цього Договору.

6.3.3. Надати Замовнику результат дослідження в електронному та друкованому вигляді, а також повернути копії матеріалів справи.

6.3.4. Не розголошувати відомості, що містяться у матеріалах справи, які йому було передано для здійснення дослідження.

6.3.5. Дотримуватися умов цього Договору і нести відповідальність за їх невиконання.

6.4. Виконавець має право:

6.4.1. Своєчасно та в повному обсязі отримувати плату за надані послуги;

6.4.2. На дострокове надання послуг за письмовим погодженням Замовника.

7. Відповідальність сторін

7.1. У разі невиконання або неналежного виконання своїх зобов'язань за Договором Сторони несуть відповідальність, передбачену цим Договором та чинним законодавством України.

8. Обставини непереборної сили

8.1. Сторони звільняються від відповідальності за невиконання або неналежне виконання зобов'язань за цим Договором у разі виникнення обставин непереборної сили, які не існували під час укладання Договору та виникли поза волею Сторін (аварія, катастрофа, стихійне лихо, епідемія, епізоотія, війна тощо).

8.2. Сторона, що не може виконувати зобов'язання за цим Договором внаслідок дії обставин непереборної сили, повинна не пізніше

6.3. The Executor shall:

6.3.1. Provide services within the time-limits established by the present Contract;

6.3.2. Provide services whose quality complies with the requirements set out in Section 2 of the present Contract.

6.3.3. Provide the Employer with the findings of the study both in electronic and printed form and return the copies of the case-files.

6.3.4. Not make public information contained in the case-file submitted for the study.

6.3.5. Comply with the provisions of the present Contract and bear responsibility for failure to comply with them.

6.4. The Executor shall have the right to:

6.4.1. Receive payment for the services provided timely and in full;

6.4.2. Provide services ahead of time, upon the written consent of the Employer.

7. Responsibility of the Parties

7.1. In the case of failure to meet their obligations or in case of improper execution of their obligations under the present Contract, the Parties shall be held liable as provided for by the present Contract and by the Ukrainian legislation in force.

8. Force majeure

8.1. The Parties shall not be held liable for failure to meet their obligations or in the case of improper execution of their obligations under the present Contract in the case of emergence of force majeure circumstances that did not exist at the time of conclusion of the present Contract and have arisen beyond the control of the Parties (accident, crash, natural disaster, epidemics, epizootic outbreak, war etc.).

8.2. The Party that is unable to meet its obligations under the present Contract as result of force majeure circumstances, shall,

ніж протягом семи днів з моменту їх виникнення повідомити про це іншу Сторону у письмовій формі.

8.3. Доказом виникнення обставин непереборної сили та строку їх дії є відповідні документи, що видані ТПП України, а також іншими уповноваженими державними органами.

8.4. У разі коли строк дії обставин непереборної сили продовжується більше ніж тридцять днів, кожна із Сторін в установленому порядку має право розірвати цей Договір.

9. Вирішення спорів

9.1. У випадку виникнення спорів або розбіжностей Сторони зобов'язуються вирішувати їх шляхом взаємних переговорів та консультацій.

10. Строк дії Договору

10.1. Цей Договір набирає чинності з моменту його підписання і скріплення печатками Сторін та діє до повного виконання Сторонами своїх зобов'язань, але не пізніше 31 грудня 2013 року.

10.2. Закінчення строку Договору не звільняє Сторони від відповідальності за його порушення, яке мало місце під час дії Договору.

11. Інші умови Договору

11.1. Будь-які зміни та доповнення до цього Договору набирають чинності з моменту належного оформлення Сторонами відповідної Додаткової угоди до цього Договору.

11.2. Одностороння відмова від виконання Сторонами своїх зобов'язань, які передбачені цим Договором, не допускається, крім випадків, передбачених цим Договором та чинним законодавством України.

11.3. У випадках, не передбачених цим Договором, Сторони керуються чинним законодавством України.

11.4. Цей Договір укладається у двох примірниках, що мають однакову

no later than within seven days from the moment of emergence thereof, notify the other Party in written form.

8.3. Relevant documents issued by the Ukrainian Chamber of Commerce and by the other competent bodies shall be the proof of force majeure circumstances and of the period they would persist.

8.4. In the case when force majeure circumstances continue over thirty days, any of the Parties may terminate the present Contract in accordance with the established procedure.

9. Dispute settlement

9.1. In the case of disputes or clash of opinions, the Parties shall undertake to resolve them by way of negotiations and consultations.

10. Duration of the Contract

10.1. The present Contract shall come into effect from the moment of its signature and sealing by the Parties and shall remain in effect until full execution by the Parties of their obligations but not later than 31 December 2013.

10.2. The expiry of Contract's duration shall not spare the Parties of responsibility for its violation that took place during the period of its being in effect.

11. Other provisions

11.1. Any amendments or supplements to the present Contract shall come into effect from the moment of proper formalisation by the Parties of any additional Agreement to the present Contract.

11.2. Unilateral refusal by any of the Parties to execute its obligations provided for in the present Contract shall not be allowed unless in case provided for in the present Contract or in the Ukrainian legislation in force.

11.3. In the cases not provided for in the present Contract, the Parties shall act pursuant to the Ukrainian legislation in force.

11.4. The present Contract is drawn up in two copies, each copy for each Party, that have equal legal force.

юридичну силу, по одному для кожної Сторони.

12. Місцезнаходження та банківські реквізити сторін

ЗАМОВНИК:

Міністерство юстиції України
Юридична адреса: 01001, м. Київ,
вул. Городецького, 13
Фізична адреса: м. Київ,
пров. Рильський, 10
Тел.: 380-44-271-15-68
Тел.: 380-44-271-16-67
код за ЄДРПОУ 00015622
Р/рахунок 35213036000030
в Державному Казначействі України
МФО 820172

Заступник Міністра юстиції – керівник апарату

_____ **А.Ю.Сєдов**

ВИКОНАВЕЦЬ:

Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates
68, rue du Faubourg Saint-Honoré
75008 Paris, France
T: 331.55.27.11.00
F: 331.55.27.21.99
Partner

_____ **Gregory B. Craig**
Seal

Skadden, Arps, Slate, Meagher & Flom LLP

12. Legal addresses and bank data of the Parties

THE EMPLOYER:

Ministry of Justice of Ukraine
Legal address: 13, Horodetskogo St., Kyiv,
01001, Ukraine
Physical address: 10, Rylskiy Lane, Kyiv
Tel.: 380-44-271-15-68
Tel.: 380-44-271-16-67
Identification code 00015622
C/a 35213036000030
in the DKU
MFO 820172

Deputy Minister - Head of Apparat of the Ministry of Justice

_____ **Mr. Sedov A.Y.**

THE EXECUTOR:

Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates
68, rue du Faubourg Saint-Honoré
75008 Paris, France
T: 331.55.27.11.00
F: 331.55.27.21.99
Partner

_____ **Gregory B. Craig**
Seal

Skadden, Arps, Slate, Meagher & Flom LLP

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000
FAX: (202) 393-5760
www.skadden.com

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TOKYO
TORONTO
VIENNA

CONFIDENTIAL

April 5, 2012

To: The Ministry of Justice
The Government of Ukraine

From: Gregory B. Craig, Partner

Subject: Retainer Memorandum

Re: Terms and Conditions

We are pleased that you are retaining Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden Arps" or the "Firm") in connection with the assignment described below ("the Engagement"). It is agreed that the terms of this Retainer Memorandum will be incorporated by reference into the Agreement between the Firm and the Ministry of Justice of the Government of Ukraine ("the Ministry") to which this Retainer Memorandum has been attached.

Scope of Engagement

The Engagement involves conducting an inquiry and writing an independent report on the evidence and procedures used during the prosecution and trial of former Prime Minister Yulia Tymoshenko, applying Western standards of due process and rule of law. The services to be provided by the Firm in connection with the Engagement will encompass those legal services normally and reasonably associated with this type of engagement which the Firm has been requested to provide and which are consistent with its ethical obligations. It is understood that the Firm's client is the Ministry, which is a department of the Government of Ukraine. The Firm is willing to take on this project with the clear understanding that the Firm will have access to all relevant materials and information that the Firm deems necessary to do its job, and that the Firm will be free to reach its own conclusions based on its own independent work. It is understood that the Firm is not being retained to engage in any "political activities" – and will not engage in any such activities – as defined in the Foreign Agent Registration Act (FARA).

Engagement Personnel

Gregory Craig will be responsible for and actively involved in the Engagement. Other lawyers involved in the Engagement will include Clifford Sloan. Additional lawyers will be added on an as-needed basis.

Fees and Expenses

Our fees will be based on the time that the Firm's lawyers spend on the Engagement along with our out of pocket expenses. In addition to the terms for payment set forth in the Agreement to which this memorandum is attached, we have agreed to offset our fees for time – charged at our normal hourly rates – and reimbursement of our out-of-pocket expenses against a retainer that has been paid in advance.

As for out-of pocket expenses, see Annex A attached. This may be periodically updated.

Waivers and Related Matters

The Firm represents a broad base of clients on a variety of legal matters. Accordingly, absent an effective conflicts waiver, conflicts of interest may arise that could adversely affect your ability and the ability of other clients of the Firm to choose the Firm as its counsel and preclude the Firm from representing you or other clients of our Firm in pending or future matters. Given that possibility, we wish to be fair not only to you, but to our other clients as well. Accordingly, this letter will confirm our mutual agreement that the Firm may represent other present or future parties on matters other than those for which it had been or then is engaged by the Government, whether or not on a basis adverse to the Ministry or any of its present or future affiliates, including in litigation, legal or other proceedings or matters, which are referred to as "Permitted Adverse Representation."

In furtherance of this mutual agreement, the Ministry agrees that it will not for itself or any other party assert the Firm's representation of the Ministry or any of its present or future affiliates, including any other organs of the Government of Ukraine, either in its representation in the Engagement or in any other matter in which the Ministry retains the Firm, as a basis for disqualifying the Firm from representing another party in any Permitted Adverse Representation and agrees that any Permitted Adverse Representation does not constitute a breach of any duty owed by the Firm. The waiver provided for in this and the preceding paragraph includes the Firm's ongoing representation of OAO Gazprom and any of its present or future affiliates or subsidiaries. The Ministry agrees that this paragraph and the preceding one do not expand the scope of the Engagement to encompass affiliates of the Ministry unless expressly agreed to by the Firm.

Duty of Confidentiality

Our representation in this Engagement is premised on the Firm's adherence to its professional obligation not to disclose any confidential information or to use it for another party's benefit without the Ministry's consent. Such obligations are subject to certain exceptions, including the laws, rules and regulations of certain jurisdictions relating to money laundering and terrorist financing. Provided that the Firm acts in the manner set forth in the first sentence of this paragraph and subject to the exceptions noted above, the Ministry will not for itself or any other

party assert that the Firm's possession of such confidential information, even though it may relate to a matter for which the Firm is representing another client or may be known to someone at the Firm working on the matter (a) is a basis for disqualifying the Firm from representing another of its clients in any matter in which the Ministry or any other party has an interest; or (b) constitutes a breach of any duty owed by the Firm. In addition, the Firm's failure to share with the Ministry any confidential information received from another client will not be asserted by the Ministry as constituting a breach of any duty owed to the Ministry by the Firm, including any duty regarding information disclosure.

If the Firm receives from any person or entity a subpoena or request for information that is within our custody or control or the custody or control of our agents or representatives, we will, to the extent permitted by applicable law, advise the Ministry before responding so that the Ministry has the opportunity to intervene or interpose any objections. Should the Ministry object to the provision of such information, the Firm may thereafter provide such information only to the extent authorized by the Ministry or required by a court or other governmental body of competent jurisdiction. The Ministry agrees to pay the Firm for any services rendered and charges and disbursements incurred in responding to any such request at the Firm's customary billing rates and pursuant to the Firm's charges and disbursements policies.

The Ministry agrees that the Firm may disclose the fact of this Engagement and related general information to the extent that such disclosure does not convey any confidential or non-public information and it is not adverse to the Ministry's interests.

Client Files and Retention

In the course of our work on this matter, we shall maintain a physical file relating to the matter. In the file we may place materials received from you with respect to the matter and other materials, including correspondence, memos, filings, drafts, closing sets, pleadings, deposition transcripts, exhibits, physical evidence, expert's reports, and other items reasonably necessary to your representation (the "Client File"). The Client File shall be and will remain your property. We may also place in the file documents containing our attorney work product, mental impressions or notes, and drafts of documents ("Work Product"). You agree that Work Product shall be and remain our property. In addition, electronic records (except those to be proffered to you at the conclusion of a matter as described below) such as e-mail and documents prepared on our word processing system shall not be considered part of your Client File unless it has been printed in hard copy and placed in your physical file, and does not constitute Work Product. You agree that we may adopt and implement reasonable retention policies for such electronic records and that we may store or delete such records in our discretion.

At the conclusion of a matter (which shall be defined as the time that our work on any matter subject to this letter has been completed), you shall have the right to take possession of the original of your Client File (but not including the Work Product). We will be entitled to make physical or electronic copies if we choose. You also agree, upon our proffer, at the conclusion of

a matter (whether or not you take possession of the Client File), to take possession of any and all original contracts, stock certificates, deeds and other such important documents or instruments that may be in the Client File, without regard to format, and we shall have no further responsibility with regard to such documents or instruments. If you do not take possession of the Client File at the conclusion of a matter, we will store such file in accordance with our standard retention procedures for a period of at least seven (7) years (the "Retention Period"). Such retention (or maintenance of accounting or other records related to our representation) shall not constitute or be deemed to indicate the presence of a continuing attorney-client relationship. During the time that we store the Client File, you shall have the right to take possession of it at any time that you choose. Subject to the foregoing, we may dispose of the Client File without further notice or obligation to you.

* * *

The provisions of this Retainer Memorandum will continue in effect, including if the Firm's representation is ended at your election (which, of course, the Ministry is free to do at any time) or by the Firm (which would be subject to ethical requirements). In addition, the provisions of this Retainer Memorandum will apply to future engagements of the Firm by the Ministry unless we mutually agree otherwise.

This agreement and any claim, controversy or dispute arising under or relating to this agreement, the relationship of the parties, and/or the interpretation and enforcement of the rights and duties of the parties shall be governed by, and construed in accordance with, the laws of the State of New York. For purposes of this letter, references to Skadden Arps or the Firm include our affiliated law practice entities.

In the event there is found to be any inconsistency between the terms of this Retainer Memorandum and the Agreement between the Ministry and the Firm to which this Memorandum is attached, the terms of this Retainer Memorandum will take precedence.

If this letter is satisfactory, please sign a copy and return it to me.

We appreciate the opportunity to work on this project and look forward to doing so.

With best regards.

Sincerely,

Gregory B. Craig

Skadden, Arps, Slate, Meagher & Flom LLP

By: _____
Name: Andriy Slyvka
Title: Deputy Minister of Justice

МІНІСТЕРСТВО ЮСТИЦІЇ УКРАЇНИ № 1

Dated: As of

Enclosures

ANNEX A

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP AND AFFILIATES
Policy Statement Concerning Charges and Disbursements
Effective April 1, 2010

Skadden Arps bills clients for reasonable charges and disbursements incurred in connection with an engagement. Clients are billed for disbursements based on the actual cost billed by the vendor or in a few cases noted below, at rates derived from internal cost analyses or at rates below or approximating comparable outside vendor charges.

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*I. **Research Services.** Charges for LexisNexis and Westlaw are billed at levels below that which would be charged for individual usage on a particular engagement. Clients are billed at rates calculated from an aggregate discounted amount charged to and paid by the Firm to LexisNexis and Westlaw. Thomson Research services are charged based on client usage allocated from actual vendor charges. Charges for other services outside research services are billed at the actual amounts charged by vendors.*

The State of Delaware Database provides computer access to a corporations database in Dover, Delaware. The charge for this service is $50 per transaction, which is the average amount charged by outside services.

*II. **Travel-Related Expenses.** Out-of-town travel expenses are billed at actual cost and include air or rail travel, lodging, car rental, taxi or car service, tips and other reasonable miscellaneous costs associated with travel. Corporate and/or negotiated discounted rates are passed on to the client. Specific Firm policies for expenditures relating to out-of-town travel include:*

- *Air Travel. Coach class is the standard on most U.S. domestic flights. However, for flights with scheduled flight times longer than 5 hours and international flights business class is generally used.*
- *Lodging. We strive to book overnight accommodations at hotels with which the Firm or the Client has preferred corporate rates.*

Local travel charges include commercial transportation and, when a private car is used, mileage, tolls and parking. Specific policies govern how and when a client is charged for these expenses; these include:

- *Fares for commercial transportation (e.g., car service, taxi, rail) are charged at the actual vendor invoice amount. The charge for private car usage is the IRS rate allowance per mile (or the equivalent outside the United States) plus the actual cost of tolls and parking.*
- *Round-trip transportation to the office is charged for attorneys who work weekends or holidays. Transportation home may be charged on business days when an attorney works past a certain hour (typically 8:30 p.m.) and has worked a minimum of ten hours that day.*
- *Local travel for support staff is charged when a staff member works past a certain hour (typically 8:30 p.m.). Charges are limited by Firm policy and depend on form of transportation and distance traveled.*

*III. **Word Processing, Secretarial and other Special Task-Related Services.** Routine secretarial tasks (correspondence, filing, travel and/or meeting arrangements, etc.) are not charged to clients. Word processing services associated with preparing legal documents are charged at $50 (£25/€35) per hour.*

Specialized tasks (such as EDGAR filings or legal assistant services) are recorded in the appropriate billing category (for example, legal assistant services are recorded as fees in "Legal Assistant Support" on bills)

*IV. **Reproduction and Electronic Document Management**. Photocopying services (including copying, collating, tabbing and velo binding) performed in-house are charged at $0.15 (£0.07/€0.11) per page, which represents the average internal cost per page. Color photocopies are charged at $0.80 (£0.40/€0.55) per page (based on outside vendor rates). Photocopying projects performed by outside vendors are billed at the actual invoice amount. Special arrangements can be made for unusually large projects.*

Electronic Data Management services (e.g., scanning, OCR processing, data and image loading/exporting, CD/DVD creation, printing from scanned files, and conversions) performed by outside vendors are billed at the actual invoice amount and those performed in-house are billed at rates comparable to those charged by outside vendors.

*V. **Electronic Communications**. Clients are charged for communications services as follow:*

Telephone Charges. There is no charge for local telephone calls or internal long distance telephone calls. External telephone calls such as collect, cellular calls, credit card, hotel telephone charges and vendor-hosted conference calls are charged at the vendor rate plus applicable taxes and are assigned to the specific matter for which such charges were incurred.

Facsimile Charges. There is no charge for facsimile usage

*VI. **Postage and Courier Services**. Outside messenger and express carrier services are charged at the actual vendor invoice amount which frequently involves discounts negotiated by the Firm. Postage is charged at actual mail rates. On certain occasions, internal staff may be required to act as messengers in which case the staff's applicable hourly rate is charged.*

*VII. **UCC Filing and Searches**. Charges for filings and searches, in most instances, are billed at the flat fee charged by the vendor. Unusual filings and searches will be charged based on vendor invoice.*

*VIII. **Meals**. Business meals are charged at actual cost. Luncheon and dinner meetings at the Firm are charged based on the costs developed by our food service vendor. Breakfast, beverage and snack services at the Firm's offices are not charged, except in unusual circumstances.*

When overtime, weekend or holiday work is required, clients are charged for the actual, reasonable cost of an attorney's meal and, for non-attorneys, a standard amount determined by Firm policy.

*IX. **Direct Payment by Clients of Other Disbursements**. Other major disbursements incurred in connection with an engagement will be paid directly by the client. (Those which are incurred and paid by the Firm will be charged to the client at the actual vendor's invoice amount). Examples of such major disbursements that clients will pay directly include:*

Professional Fees (including disbursements for local counsel, accountants, witnesses and other professionals)
Filing/Court Fees (including disbursements for agency fees for filing documents, standard witness fees, juror fees)
Transcription Fees (including disbursements for outside transcribing agencies and courtroom stenographer transcripts)
Other Disbursements (including any other required out-of-pocket expenses incurred for the successful completion of a matter)

* * * * *

* *Fees incurred for attorney and Firm personnel in connection with the Engagement are not covered by this policy.*

Exhibit

7

U.S. Department of Justice

National Security Division

Washington, DC 20530

SEP 5 2013

Gregory B. Craig, Esquire
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, NW
Washington, DC 20005-2111

Re: Possible Obligation to Register Pursuant to the Foreign Agents Registration Act

Dear Mr. Craig:

This is in reference to your letters and enclosures of February 6, 2013, and June 3, 2013, responding to our inquiries of December 18, 2012, and April 9, 2013, regarding your firm's possible obligation to register under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (FARA or the Act) for its work on behalf of the Ministry of Justice of the Government of Ukraine (the Ministry).

Your Retainer Memorandum states your firm was hired by the Ministry to conduct an inquiry and to write "an independent report on the evidence and procedures used during the prosecution and trial of former Prime Minister Yulia Tymoshenko, applying Western standards of due process and rule of law." Your firm completed the report and provided it to the Ministry. According to your June 3, 2013 letter, in December 2012, your firm disseminated a copy of the report to representatives of the New York Times, National Law Journal, and Los Angeles Times. Following distribution, you spoke with these representatives "to correct misinformation that the media had received - and was reporting - from the Ministry of Justice and from the Tymoshenko legal team in Ukraine."

In your correspondence with this office, you assert that Skadden neither served as the Ministry's agent in the United States, nor provided any services to the Ministry covered by FARA or requiring registration under FARA. Our review of the documentation concludes that Skadden was an agent of the Ministry and was engaged in political activities in the United States for the Ministry. You indicate that your firm was paid by the Ukraine to produce an independent report on the Tymoshenko prosecution, and that the report was disseminated to news media by your firm. You further state that you spoke with representatives of the media to correct misinformation regarding the report. The dissemination of the report to the media and your communications with the media were political activities as defined in 22 U.S.C. § 611 (o) of FARA. Furthermore, by engaging in these activities for the Ministry, Skadden acted as a public relations counsel, publicity agent, and information-service employee as defined in Section 611 of the Act. We have determined that your actions in contacting the media were activities meant to influence the U.S. public with reference to the political or public interests, policies or relations of Ukraine. Accordingly, Skadden must register under FARA as an agent of the Ministry.

If you have any questions, please contact me at (202) 233-0776.

Sincerely,

Heather H. Hunt, Chief
Registration Unit
Counterespionage Section
National Security Division

Exhibit 8

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111
TEL. (202) 371-7000
FAX: (202) 393-5760
www.skadden.com

September 26, 2013

Heather H. Hunt, Chief
Registration Unit
Counterespionage Section
National Security Division
U.S. Department of Justice
600 E Street, NW
Washington, DC 20530

Re: Possible Obligation to Register Pursuant to the Foreign Agents Registration Act

Dear Ms. Hunt:

I am writing to acknowledge receipt of your letter of September 5, 2013 and to tell you that my partner in the New York office of Skadden, Mr. Lawrence Spiegel, will be calling to ask for a meeting. Among other things, Mr. Spiegel is the General Counsel for the law firm.

The purpose of the meeting would be to discuss the basis for the conclusions that you set forth in your September 5, 2013 letter.

I hope you and your colleagues will be willing and able to meet with us.

Very truly yours,

Gregory Craig

Exhibit 9

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2111

TEL: (202) 371-7000
FAX: (202) 393-5760
www.skadden.com

FIRM/AFFILIATE OFFICES
BOSTON
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HONG KONG
LONDON
MOSCOW
MUNICH
PARIS
SÃO PAULO
SHANGHAI
SINGAPORE
SYDNEY
TOKYO
TORONTO
VIENNA

DIRECT DIAL
202-371-7400
DIRECT FAX
202-661-9100
EMAIL ADDRESS
GCRAIG@SKADDEN.COM

October 10, 2013

Ms. Helen Hunt, Chief
Registration Unit, Counterespionage Section
National Security Division
United States Department of Justice
Washington, DC 20530

Re: FARA Registration

Dear Ms. Hunt:

In further consideration of the issues raised in your letter of September 5, 2013, I would like to make you aware of the following additional information:

As reported in earlier correspondence, this law firm provided a copy of the Tymoshenko Report ("the Report") to certain U.S. media outlets. This was done in response to requests from the media. The firm did not provide copies of the Report to any other media outlets in the United States.

With respect to statements appearing in the *National Law Journal* and the *New York Times,* those statements were intended to correct mischaracterizations of the Report, some of which were attributable to Ukraine.

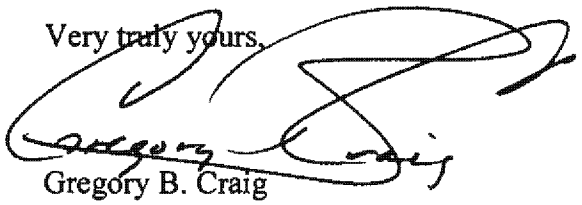
The *Los Angeles Times* reported, for example: "The Ukrainian Ministry of Justice praised the report in a public statement . . . trumpeting that it found Tymoshenko's claims of political persecution 'groundless.'" That characterization of the Report is and was – inaccurate. The firm's response was aimed at correcting this mischaracterization.[1]

[1] "Mr. Craig . . . said his team was not able to judge the local politics that brought Ms. Tymoshenko to trial on charges of abusing her authority . . . 'We leave to others the question of whether this prosecution was politically motived,' he said. 'Our assignment was to look at the evidence in the record and determine whether the trial was fair.'" *New York Times*, December 12, 2012.

In its initial online coverage of the Report, the *National Law Journal* said: "[T]he trial was not politically motivated, and the problems weren't enough to undermine her conviction, the team said." That characterization of the Report is – and was – inaccurate. The firm's response was aimed at correcting this mischaracterization.[2]

In responding to inaccuracies in U.S. news reports – some of which were directly attributable to Ukraine – the law firm did not consult with Ukraine, did not inform Ukraine, did not act under instruction from Ukraine and was in no way serving as an agent for Ukraine.

Very truly yours,



Gregory B. Craig

[2] "As we say in the report, with regard to some of Tymoshenko's claims, we found very serious problems in the conduct of her trial," Skadden partner Gregory Craig, one of the lead attorneys on the team, said. With regard to other claims, we found insufficient evidence in the record to support the objection." *National Law Journal*, December 13, 2012.

Exhibit

10

U.S. Department of Justice

National Security Division

Washington, DC 20530

JAN 16 2014

Gregory B. Craig, Esquire
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, NW
Washington, DC 20005-2111

Re: Possible Obligation to Register Pursuant to the Foreign Agents Registration Act

Dear Mr. Craig:

This is in reference to our meeting on October 9, 2013, and your letter of October 10, 2013, regarding your firm's possible obligation to register for the Ukrainian Ministry of Justice under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (FARA). Present at the meeting were Ken Gross and Robert Spiegel of your firm and several members of my staff.

You explained during the meeting and in your recent letter that your firm prepared the Tymoshenko Report for the Ukrainian Ministry of Justice and you indicated that your comments to the *National Law Journal*, *Los Angeles Times*, and the *New York Times* were not political activities, but were meant to correct mischaracterizations of the Report attributable to the Ukrainian Ministry of Justice and Tymoshenko's Ukrainian lawyers concerning whether the Tymoshenko prosecution was a political prosecution. You informed the media of the inaccuracy indicating that the Report did not decide this issue.

You conclude that your firm in response to U.S. news inquiries did not act as an agent of the Ukraine. We agree and find based upon the information you brought to our attention that your firm has no present obligation to register under FARA.

If you have any questions about this matter, please call me at (202) 233-0776.

Sincerely,

Heather H. Hunt, Chief
Registration Unit
Counterespionage Section
National Security Division

Exhibit

11

Office of the Inspector General
U.S. Department of Justice

Audit of the National Security Division's Enforcement and Administration of the Foreign Agents Registration Act

Audit Division 16-24 September 2016

AUDIT OF THE NATIONAL SECURITY DIVISION'S ENFORCEMENT AND ADMINISTRATION OF THE FOREIGN AGENTS REGISTRATION ACT

EXECUTIVE SUMMARY

The Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C § 611 *et seq*., as amended, is a disclosure statute that requires persons acting as agents of foreign principals in a political or quasi-political capacity to make periodic public disclosure of their relationship with the foreign principal, as well as activities, receipts, and disbursements in support of those activities. According to the Department of Justice (Department), this disclosure facilitates evaluation by the government and the American people of the statements and activities of such persons in light of their function as foreign agents. The FARA Registration Unit (FARA Unit) of the Counterintelligence and Export Control Section (CES) within the Department's National Security Division (NSD) is responsible for the administration and enforcement of the Act. A willful failure to register as an agent of a foreign principal may result in criminal prosecution and a sentence of a fine and up to 5 years in prison. There also is a civil enforcement provision that permits the Department to seek to enjoin a party from acting as an agent of a foreign principal in violation of FARA.

This review was initiated in response to a requirement by the U.S. House of Representatives Committee on Appropriations that the OIG review the Department's enforcement of FARA. Based on this direction, our audit objectives were to review and evaluate the monitoring and enforcement actions taken by the Department to ensure appropriate registration, and to identify areas for the Department to consider seeking legislative or administrative improvements.

During our audit, we found that the number of active FARA registrations peaked in the 1980s, with a high of 916 active registrations in 1987, and began to fall sharply in the mid-1990s. The Department has not performed an analysis on the decline, but NSD officials speculated that the imposition of FARA registration fees in 1993 and the passage of the Lobbying Disclosure Act (LDA), which carved out a significant exemption to FARA in 1995, were likely factors. In addition to the declining trend in registrations, we also found that there historically have been very few FARA prosecutions. Between 1966 and 2015 the Department only brought seven criminal FARA cases – one resulted in a conviction at trial for conspiracy to violate FARA and other statutes, two pleaded guilty to violating FARA, two others pleaded guilty to non-FARA charges, and the remaining two cases were dismissed. We were also told by NSD that the Department has not sought civil injunctive relief under FARA since 1991.

In discussions with several Federal Bureau of Investigation (FBI) counterintelligence agents and Assistant United States Attorneys (AUSA), as well as NSD officials, we found differing understandings between field agents and prosecutors and NSD officials about the intent of FARA as well as what constitutes a

"FARA case." The primary difference stemmed from the belief of investigators that investigations conducted pursuant to a separate criminal provision, 18 U.S.C. § 951 (Section 951), were FARA cases. However, NSD officials stated that unlike FARA and the LDA, Section 951 can be aimed at political or non-political activities of agents under the control of foreign governments. Although registration under FARA can serve as the required notification to the Attorney General under Section 951, the criminal activity targeted is different. According to NSD officials, who must approve both FARA and Section 951 cases, a true FARA case can only be brought pursuant to 22 U.S.C. § 611, *et seq*., and these officials stated that NSD currently is engaged in ongoing outreach activities that will help better educate investigators about FARA. We believe these differing understandings are indicative of the lack of a comprehensive Department enforcement strategy on FARA, which the Department should develop and integrate with its overall national security efforts.

Further, the majority of those agents interviewed believed that NSD's review of what they believed to be FARA cases was generally slow and that NSD is reluctant to approve these charges. Some investigators believed that NSD has a clear preference toward pursuing registration for alleged FARA violators rather than seeking prosecution, which in their opinion, leaves an important counterintelligence tool underutilized. NSD officials told us that they believed that even though criminal penalties are available under FARA, the primary goal of FARA is in fact to ensure appropriate registration and public disclosure. These NSD officials also disputed that there is any reluctance on their part to approve either true FARA or Section 951 cases, and stated that they approve charges when the evidence presented leads them to judge that a provable willful violation exists.

Timely submission of required documentation is essential for full and complete public disclosure. However, we found in our testing that 62 percent of initial registrations were untimely, and that 50 percent of registrants filed at least one supplemental statement late. We also found that NSD needs to improve its controls and oversight of FARA registrations, particularly involving its inspections of registered foreign agents and enforcing the complete and timely submission of required documentation. Agents of foreign principals are required to maintain records of activities on behalf of their principal for the duration of the agreement and 3 years thereafter. These records are subject to inspection by the NSD's FARA Unit. If an inspection identifies deficiencies in an agent's disclosures, the FARA Unit advises the registrant of the deficiencies and actions required for resolution. We noted, however, that several inspection recommendations issued by the FARA unit still remained unresolved and believe that NSD can further improve its monitoring efforts by developing a policy to ensure appropriate resolution of recommendations identified in its inspection reports. NSD stressed to us that because the FARA Unit has limited staff and considerable responsibilities follow-up can be difficult. We understand this challenge but believe improvements can still be made.

With regard to potential legislative improvements, NSD officials stated that a major difficulty is a lack of authority to compel the production of information from persons who may be agents. As a result, NSD is currently pursuing civil investigative demand (CID) authority from Congress in order to enhance its ability

to assess the need for potential agents to register. While we concur that CID could be a useful tool for NSD, there are important competing considerations at stake, and we believe that any expansion of such authority must also include appropriate controls and oversight to ensure it is used appropriately. Another difficulty NSD cited relates to the breadth and scope of existing exemptions to the FARA registration requirement and determining whether activities performed by certain groups, such as think tanks, non-governmental organizations, university and college campus groups, foreign media entities, and grassroots organizations that may receive funding and direction from foreign governments fall within or outside those exemptions. According to the FARA Unit, these types of organizations generally claim that they act independently of foreign control or are not serving a foreign interest and are not required to register.

NSD officials also told us that the enactment of the LDA in 1995 may have contributed to the recent decline in FARA registrations. The LDA focuses on those engaged in lobbying activities on behalf of domestic and foreign interests and those agents of foreign principals who engage in lobbying activities and who register under the LDA, and, as a result, are exempt from registration under FARA. However, NSD believes that because FARA disclosure requirements are more rigorous than those of the LDA, those lobbying on behalf of foreign commercial interests should not be exempt from FARA registration. We believe that the development of an enforcement strategy for FARA cases should include an assessment of the LDA exemption and its impact to determine if legislative changes should be sought.

In this report we make 14 recommendations to help improve NSD's enforcement and administration of FARA. We found that several of these recommendations were similar to those made over the years in reports by the Government Accountability Office, and its predecessor the General Accounting Office, and by public interest organizations, and that these recommendations should be seriously considered if the purposes of FARA are to be fully realized.

AUDIT OF THE NATIONAL SECURITY DIVISION'S ENFORCEMENT AND ADMINISTRATION OF THE FOREIGN AGENTS REGISTRATION ACT

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number of cases submitted for review, the amount of time such review takes, and the final determination made on the case. We believe this will enable the Department to assess and improve its handling of FARA cases. In particular, trends could be determined regarding what case information has been used to move forward with prosecutions, or whether NSD is making determinations on a timely basis.

Civil Enforcement of FARA

In addition to criminal penalties, FARA allows the Department to seek civil injunctive relief when it identifies a foreign agent it believes to be in violation of the statute. In order to seek injunctive relief, the Attorney General may petition the appropriate U.S. District Court for an order temporarily or permanently disallowing the alleged foreign agent from acting as an agent of a foreign principal. This type of remedy could be sought in instances where an alleged agent failed to register or was delinquent in filing their supplemental statements. It could also be used in instances where a registered foreign agent fails to address recommendations stemming from an inspection by the FARA Unit.

When we inquired about the Department's use of injunctive relief, we were told that it has not made use of the remedy since 1991, for several reasons. First, according to FARA Unit staff, in order to pursue a petition seeking to enforce registration, the Department must have specific evidence of foreign direction and control to be successful. According to these staff members, it is rare that such evidence exists. In addition, we were told that, as a matter of practice, before the unit would seek injunctive relief that will require registration or remedying delinquent filings, it would have to have sought voluntary registration and received a direct refusal. According to the FARA Unit, they do not typically encounter such scenarios.

FARA Unit staff also told us that the unit sought authority to impose civil fines for delinquencies twice in the 1990s, without success. However, current staff added that they would be reluctant to seek civil fines at present because it would be counterproductive in that it could serve as a deterrent to disclosure to seek fines for lateness against a registrant who is otherwise in compliance with FARA, and it would add administrative costs to the unit's work.

Nevertheless, based on the widespread delinquencies we found, we believe that there may be circumstances in which an injunctive remedy or other penalty is merited. For instance, as discussed later in this report, when we reviewed FARA Unit inspection reports from 2008 to 2014, we found instances where the unit issued recommendations to the registrant requesting submission of late supplemental statements; however, the requested supplemental statements do not appear in the FARA database, and appear to remain delinquent despite the inspection and notification of the deficiencies. Although we are not questioning that NSD needs to have the ability to use its discretion when deciding whether to pursue criminal penalties or an injunctive remedy against an alleged violator of FARA, we

believe NSD should ensure that it appropriately utilizes all of the enforcement tools available to it.

Administration and Monitoring of FARA Registrations

The FARA Unit is responsible for the monitoring of new and existing FARA registrations on an ongoing basis. This includes receiving, reviewing and processing documentation and payments, and addressing late or inaccurate submissions. As of the end of calendar year 2014, the FARA Unit was responsible for a foreign agent registrant pool of 360 agents representing 561 foreign principals. We tested documentation dating back to 2013 from a judgmentally selected risk-based sample of 78 FARA registrants, representing approximately 22 percent of the total, to evaluate the effectiveness of the FARA Unit's monitoring efforts. Generally, we found that the required documents were complete. However, we also found that documents were routinely submitted late, and in some instances registrants had ceased submitting required documentation entirely. These findings are further detailed in the sections below.

Identifying Potential Registrants

The FARA Unit attempts to identify and make contact with individuals or entities that may have an obligation to register under FARA. Identification is made primarily through review of a range of publications, web sites, and LDA filings for indications of a connection between a potential agent and a foreign principal. Potential registrants may also be identified through review of existing registrant information, or through referral from other government offices or agencies, or from the public.

When a potential obligation to register is found, the unit issues a letter of inquiry to the potential registrant advising of FARA requirements, and requests additional information relevant to registration status. The FARA Unit has found that most of the recipients of such letters responded within what it has considered to be a reasonable amount of time and either register or offer what the unit finds to be sufficient explanation that FARA requirements do not apply to them. If there is no response to the letter, a seemingly false response, or another reason to believe a significant FARA offense has been committed, FARA personnel will refer the matter to the FBI.

The FARA Unit stated it has issued approximately 130 letters of inquiry over the past ten years. Thirty-eight of the recipients were found to have an obligation to register under FARA, and subsequently did so. The remaining recipients were found to either have no obligation to register, or the FARA Unit is continuing to seek additional information to make a determination.

New Registrations

Thirteen of the 78 agent files from 2013 to 2015 that we reviewed had registrations that were initiated after January 1, 2013. We considered these to be

Unit has limited staff and considerable responsibilities follow-up on inspection reports can be difficult. We understand this challenge but believe improvements can still be made. We recommend that NSD further improve its overall monitoring efforts by developing a policy and practices that ensure appropriate and timely follow-up and resolution of findings identified in its inspection reports.

Other Possible Legislative Improvements that the Department Might Seek

Throughout this audit we discussed with NSD and FBI officials whether there were any legislative improvements that the Department might seek to FARA that would help in its efforts to administer and enforce the law. The FBI did not have any suggestions but the NSD officials indicated that in recent years they have pursued some key legislative changes to FARA, but these efforts have largely been unsuccessful.

One area that was identified as a possible subject for such amendments is the statutory exemptions to FARA's registration requirement. There are a number of statutory exemptions to FARA registration requirements, which were summarized on the NSD website as of January 2016 as follows:

- Diplomats and officials of foreign governments, and their staffs, if properly recognized by the U.S. State Department.
- Persons whose activities are of a purely commercial nature or solely of a religious, scholastic, academic, scientific or fine arts nature.
- Certain soliciting or collecting of funds to be used for medical aid, or for food and clothing to relieve human suffering.
- Lawyers engaged in legal representation of foreign principals in the courts or similar type proceedings, so long as the attorney does not try to influence policy at the behest of their client.
- Any agent who is engaged in lobbying activities and is registered under the Lobbying Disclosure Act if the representation is on behalf of a foreign commercial interest rather than a foreign government or foreign political party.

NSD officials indicated to us that broadly worded exemptions make criminal or civil enforcement difficult, though they did not propose any specific changes to these categories. We believe that this is an area that the Department should examine to determine if additional refinement of these categories is warranted.

The Lobbying Disclosure Act and FARA

FARA Unit staff believed that the passage of the Lobbying Disclosure Act (LDA) in 1995 contributed to the steep decline in FARA registrations in the years that followed. We were told that because the LDA allowed agents representing foreign commercial interests to register as lobbyists under LDA, rather than as

foreign agents under FARA, FARA is now largely limited to those who represent foreign governmental and political party interests.

In the FARA Unit's judgment, registration and disclosure requirements under the LDA are less stringent and result in less transparency than FARA, specifically with respect to funds transacted and activities performed. In addition, unlike FARA, lobbyists with income or expenses below certain thresholds are not required to register under LDA. If a lobbyist representing a foreign commercial interest does not meet LDA thresholds, that lobbyist may have no obligation to register under either statute, because the activity serves a commercial rather than foreign governmental or political interest. Moreover, the LDA is administered by the Congress and, according to the FARA Unit, the LDA staffs who reside in the U.S. Senate and U.S. House of Representatives do not perform inspections of registrants, as the FARA Unit does for FARA registrants. FARA Unit staff also expressed concern that because of the LDA amendments to FARA, foreign governmental and commercial interests, which are not always as distinct from one another as in the United States, could use LDA as a loophole to avoid FARA registration and disclosure, even though they are acting under the direction and control of a foreign government.

NSD officials believe that Congress should act and once again require those who lobby for foreign commercial interests to register under FARA. We agree with the concern that foreign governmental and commercial interests overseas may not always be distinct and we recommend that NSD perform a formal assessment of the LDA exemption, along with the other current FARA exemptions and determine whether a formal effort to seek legislative change is warranted.

Civil Investigative Demand Authority

As discussed above, one of the tasks for the FARA Unit is to locate foreign agents who may have an obligation under FARA but either knowingly or unknowingly fail to register. The FARA Unit told us that, when it successfully identifies a potential agent, it can sometimes be difficult to obtain the necessary information the FARA Unit needs to determine whether registration is required. Civil investigative demand authority (CID) allows the Department to compel the production of records, or response to written interrogatories or oral testimony concerning such records. The Department submitted legislative proposals seeking CID authority for the FARA Unit in 1991, and again in 1999. A GAO report in 2008 also recommended CID authority for the FARA Unit.[19] However, the Department's attempts to obtain this authority in 1991 and 1999 were unsuccessful. Neither NSD officials nor the Department's Office of Legislative Affairs could offer an opinion as to why these efforts were unsuccessful; however, FARA Unit staff did provide some insight as to how this authority could help it better determine when FARA violations are occurring, specifically identifying think tanks, non-governmental and grass roots

[19] U.S. Government Accountability Office, *Post-Government Employment Restrictions and Foreign Agent Registration,* GAO-08-855 (July 30, 2008).

organizations, organizations operating on college or university campuses, and foreign media outlets operating in the United States as potential registrants as to which it can be difficult to obtain information for a variety of reasons. Such organizations may receive funding from foreign governments and subsequently take public political positions that are favorable to those governments. According to the FARA Unit, these types of organizations generally claim that they act independently of foreign control or are not serving a predominantly foreign interest and are not required to register.

The FARA Unit has identified the above as its primary enforcement challenge, and believes CID is vital in determining whether FARA violations are occurring. We do not dispute that CID authority would provide FARA Unit staff with a very useful additional tool in in its efforts to administer and enforce FARA. However, we believe CID authority is a powerful authority that can be subject to overreach and abuse if left unchecked, and which cannot be allowed to be used to overcome legitimate and important legal protections and interests. Therefore, we believe that any such expansion of CID authority would have to include rigorous controls and oversight to ensure that it is being used appropriately.

Process for Filing Informational Materials

As discussed earlier in this report, FARA requires registrants who transmit informational materials on behalf of their foreign principal to appropriately mark that material and file it with the Department of Justice within 48 hours of the beginning of transmittal. The FARA Unit told us that the term "informational materials," which replaced the term "propaganda" in 1995, is not formally defined in the Act or its implementing regulation. As a result, the FARA Unit has developed its own working definition of what constitutes informational materials in order to fairly advise registrants of the requirements. However, without a statutory definition of the term "informational materials," the FARA Unit cannot be certain it is satisfying Congressional intent for FARA.

Additionally, the FARA Unit believes that advances in information technology have made the 48-hour rule outdated. Registered foreign agents now send out informational materials via Twitter and other social media on a near-continuous basis. Trying to enforce the requirement for them to submit all of these materials in hard copy within 48 hours of dissemination creates a constant and unrealistic burden on registrants to submit materials, and on FARA personnel to police their submissions. Allocating resources to enforcing the 48 hour rule also would consume a disproportionate amount of time on the part of FARA unit, often to the detriment of other crucial aspects of their work. FARA Unit staff also told us that informational materials mailed via the U.S. Postal Service in hard copy must pass through screening prior to delivery. This often results in submissions being delayed for weeks or longer before arriving at the FARA Unit's office. The FARA Unit believes that the statute should be amended to allow registrants to compile informational materials and submit them semi-annually with each supplemental statement.

Exhibit

12

UNCLASSIFIED//FOUO

FEDERAL BUREAU OF INVESTIGATION

Date of entry 05/23/2018

On May 15, 2018, HEATHER HUNT (HUNT), Chief of the Foreign Agents Registration Act (FARA) Unit of the U.S. Department of Justice (DOJ), was interviewed at her place of employment by Assistant United States Attorneys Jane Kim and Kristy Greenberg from the Southern District of New York (SDNY); Trial Attorney Jason McCullough from DOJ's Counterintelligence and Export Control Section; and Special Agents Spencer Lucas and Daniel Kegl from the New York Office of the Federal Bureau of Investigation.

At the beginning of the interview, HUNT was provided with a binder of tabbed exhibits prepared by SDNY. The interviewers referenced the exhibits throughout the interview, and the corresponding tab and Bates numbers are noted below where applicable. A copy of the binder is attached hereto as a physical 1A package.

HUNT also produced printed materials related to the FARA unit's correspondence with Skadden, Arps, Slate, Meagher & Flom LLP (Skadden). Although these materials were duplicative of the Bates-stamped exhibits referenced above, HUNT's print-outs are also included in the physical 1A package.

After being advised of the identities of the interviewing attorneys and agents and the nature of the interview, HUNT provided the following information:

FARA Unit Responsibilities and Procedures

HUNT first joined the FARA unit as a clerk/typist in February 1984; she later became a paralegal before attending law school and continuing with the unit as an attorney. HUNT was promoted to Chief in 2002.

The FARA unit currently employs three attorneys and six professional staff members, including program specialists and analysts. In 2012 and 2013, there were only two attorneys in the unit: HUNT and KEVIN CONNOLLY, who has since retired.

Investigation on 05/15/2018 at Washington, District Of Columbia, United States (In Person)

File # [redacted] Date drafted 05/17/2018

by LUCAS SPENCER J, KEGL DANIEL

The unit is responsible for the administrative enforcement of the FARA statute. This includes processing FARA registrations and subsequent filings; responding to written "Rule 2" requests submitted by potential registrants; reviewing public source materials and contacting individuals or entities that might be required to register; conducting approximately 14 inspections of current registrants each year; and providing semi-annual reports to Congress. At present, the FARA unit oversees 425 active registrants, some of which are registered as agents for multiple foreign principals.

In addition to these responsibilities, the FARA unit frequently receives and responds to informal calls and emails from what HUNT described as the "FARA bar" - attorneys and firms with established expertise in the field who represent multiple registrants. The FARA bar includes law firms such as Perkins Coie, Covington & Burling, Wiley Rein, and Akin Gump, as well as individuals such as KEN GROSS at Skadden Arps.

HUNT receives a call almost every day from someone seeking guidance about a possible obligation to register; HUNT essentially recites the FARA statute to potential registrants and might advise them to register if it sounds like a "slam dunk" case, but she would never tell someone that they didn't have to register over the phone. HUNT does not like responding definitively to hypothetical scenarios, and she generally insists that the attorneys submit formal "Rule 2" requests instead. The unit has received ten "Rule 2" requests in 2018.

When the program specialists or attorneys in the unit discover information that suggests an individual or entity might be required to register under the statute, the unit generates a "Possible Obligation Letter" (POL) seeking additional information about the activities at issue. The information that triggers a POL might come from publicly available media reports, the registration statements of other registrants, or complaints from the public. HUNT reviews all POLs and estimated the unit had already sent out twenty POLs in 2018.

Nothing in the FARA statute compels the potential registrant to respond to a POL, but HUNT said "ten out of ten" POLs receive a reply. The FARA unit reviews the information provided by the potential registrant and determines whether registration is required. The process often involves additional correspondence between the unit and the potential registrant and sometimes requires an in-person meeting with the potential registrant's representatives. If the unit does not develop sufficient

information to reach a determination either way, it might let an inquiry "simmer" until new information justifies re-contacting the potential registrant.

If the unit concludes that registration is required under the statute, HUNT sends a "Must Register" letter that explains the legal basis of the decision. No one has ever ignored a "Must Register" letter and failed to register, but, once or twice a year, a potential registrant will request a follow-up meeting to dispute the unit's conclusion. Such a meeting might convince the FARA unit that registration is not required, or the potential registrant may ultimately decide to cease the activity at issue to avoid the obligation to register.

There is no penalty under the statute for late or retroactive registration, but the FARA unit could seek injunctive relief if someone refused to register, and "willful failure" to register is a criminal violation that has been prosecuted four or five times since 2007. Short of seeking injunctive relief, HUNT once asked an Assistant Attorney General to send a "Must Register" letter to a recalcitrant potential registrant.

HUNT's goal, throughout these exchanges, is to get people registered - she is not looking for "gotcha" moments.

Tab 1 - SDNY_00030-33

HUNT reviewed a series of emails exchanged on 12/14/12 between herself, KEVIN CONNOLLY, TIMOTHY PUGH, and ALEX MUDD with the subject line "Tymoshenko - Skadden (Possible Obligation?)".

HUNT described this email chain as illustrative of the unit's deliberative process. In this case, MUDD found and forwarded an article about Skadden's report on the Yulia Tymoshenko case (the SA Report). Because the SA Report was written at the request of the Government of Ukraine and disseminated in the United States, it appeared to HUNT that it might constitute registrable activity under the FARA statute.

In HUNT's reply to MUDD, she wrote that she was "[t]empted to call them today" because she spoke to KEN GROSS so frequently. HUNT is sure she didn't actually call because she had no voice, but it would not have been unusual for her to mention the article to GROSS, let him know that a POL was being prepared, and hear his initial reaction.

HUNT reviewed the full SA Report around the time of this email chain. The most important factor to consider was who was directing or controlling the activities at issue, and the purpose of the POL was to determine who sponsored the publication of the SA Report.

Tab 2 - SDNY_00017

HUNT reviewed the POL dated 12/18/12, which was signed by her and addressed to Skadden's managing director in New York.

HUNT said POLs are form letters that have looked generally the same for 33 years. Two of the four information requests (regarding ownership of the firm and the nature of the firm's business) were not relevant here because the unit was very familiar with Skadden, but the final two requests were critical to establishing whether an agency relationship existed between Ukraine and Skadden (a description of the firm's activities on behalf of the Government of Ukraine or any other foreign entity, and information regarding the terms and conditions of any written or oral agreement).

Tab 3 - SDNY_00550-551

HUNT reviewed an email from MUDD dated 01/03/13 with the subject line "FYI-Skadden Response expected next week (Tymoshenko)", in which MUDD noted that LAWRENCE SPIEGEL from Skadden had left a voicemail regarding the POL.

HUNT does not believe anyone returned SPIEGEL's call; there would have been no reason to call him back, the unit was more interested in receiving the response to the POL. HUNT does not recall dealing with SPIEGEL much, if at all, prior to this matter.

Tab 4 - SDNY_00552-553

HUNT reviewed an email from MUDD dated 01/16/13 with the subject line "UPDATE: Tymoshenko Case - Skadden Report", in which MUDD noted the 01/13 /13 registrations of Arnall Golden Gregory and Tauzin Consultants.

E-filed FARA registrations are reviewed by case managers for sufficiency as a matter of routine. When reviewing the Arnall Golden Gregory and Tauzin Consultants filings, MUDD noticed a reference to the SA Report and brought it to HUNT's attention. HUNT does not recall whether any additional information regarding the SA Report was included in the Arnall Golden Gregory and Tauzin Consultants files, but volunteered to look into it and follow-up with the interviewing attorneys.

Tab 5 - SDNY_00679-713

HUNT reviewed Skadden's 02/06/13 response to the POL, which was addressed to "Helen Hunt" [sic] and signed by GREGORY CRAIG. HUNT said she and KEVIN CONNOLLY would have both reviewed the letter upon receipt in 2013.

HUNT was directed to CRAIG's response to question three, in which he stated, "The Firm insisted on complete independence...". HUNT said the question of independence was relevant to her analysis because if Skadden had simply written the report and given the finished product to the government, there would be no obligation to register under FARA.

HUNT was asked whether it would affect her view on the question of independence if Skadden had disclosed that the firm was also assisting the Ukrainian Ministry of Justice with preparations for another trial of Tymoshenko. HUNT said that was something that should have been disclosed in response to the POL's question regarding "the activities the firm has engaged in or the services it has rendered" to Ukraine. The question was phrased in general terms for a reason; Skadden, however, limited its response specifically to the SA Report.

HUNT's unit does not have the resources to investigate questions like the independence of the SA Report on its own; the FARA unit relies on potential registrants' responses to its POLs, and more information is always better than the alternative.

The reference to the "private citizen" who contributed funding for the SA Report (page 3 of CRAIG's letter) made HUNT curious to learn more. Compensation is one of several factors relevant to determining who is calling the shots, so this response left open the question as to who was directing the activities at issue.

Tab 6 - SDNY_00561-562

HUNT reviewed an email with the subject line "Fw: Yulia Tymoshenko: Ukrainian authorities must be held responsible for corrupt deals", which she forwarded to THOMAS REILLY and STEVEN PELAK on 02/25/13.

HUNT forwarded the article regarding Tymoshenko's allegation that Skadden received $1.5-2 million for the SA Report to the Acting Chiefs of the DOJ's Counterintelligence and Export Control Section for their information. HUNT was more interested in Skadden's activities on behalf of Ukraine than the accusations of corruption in the payment process, because Skadden had already admitted that it was hired by Ukraine. But if Skadden and Ukraine were attempting to hide the source of the funding, it could be relevant to the analysis.

The FARA unit's primary focus is whether an agency relationship existed and whether Skadden performed any political activities as defined by the statute. In that regard, the FARA statute is content-neutral because any type of report, whether independent or not, could have been intended to influence the U.S. public. The question is what Skadden did with the report.

HUNT was asked whether it would change her analysis if the Government of Ukraine had written its own report and paid Skadden for the use of its name and credibility. HUNT said that could constitute political activity.

Tab 7 - SDNY_00576-577

HUNT did not remember the call between KEN GROSS and KEVIN CONNOLLY referenced in the 04/03/13 - 04/04/13 emails.

Tab 8 - SDNY_00012-14

HUNT reviewed the 04/09/13 letter, which was signed by her and addressed to CRAIG; the letter included seven additional requests for information, which were discussed in the context of CRAIG's subsequent reply.

HUNT pointed to the paragraphs inquiring about Skadden's fee arrangement with the Ministry of Justice and the unspecified amounts received from the "private citizen". HUNT said she wouldn't have included all of that if the question of funding hadn't been relevant to her analysis.

Tab 9 - SDNY_00044-53

HUNT reviewed Skadden's 06/03/13 response letter, which was signed by CRAIG.

HUNT was directed to CRAIG's statement on page 2 that the private citizen who funded the SA Report "had no connection to the project whatsoever", and thus his identity would not be disclosed. HUNT was asked whether the FARA unit would have wanted to know if that individual met with Skadden and directed their activities related to the release of the SA Report. HUNT said of course that would be relevant; maybe the individual was a foreign principal himself, or maybe he was being directed by the Government of Ukraine. Coordinating the release of the SA Report would be public relations activity under the statute.

Skadden did not provide any information like that, but HUNT still produced a "Must Register" letter based on the information contained in Skadden's 06/03/13 response. The FARA statute has several facets, and only one has to

be satisfied to trigger registration. The unit concluded that registration was necessary because Skadden disseminated the report to three journalists; if the unit had been aware of other facts, it might have concluded that Skadden was engaged in a different kind of political activity and required registration on those grounds.

HUNT expects potential registrants to be truthful and complete in their responses to POLs, because that's all the unit has to go on. Sometimes other information comes out later in the media, but the FARA unit doesn't always have the full picture when it makes its determinations.

If Skadden had disclosed that it was involved in U.S. media strategy, HUNT said it would have been a slam dunk case. HUNT would have told Skadden to register if they had advised or made any recommendations with respect to the roll-out of the SA Report in the U.S. media.

Skadden represented that it made no statements or comments to the media other than to correct errors, but if the firm had been "backgrounding" reporters in the U.S. about the SA Report, that would have been registrable activity.

HUNT was directed to Skadden's response to the first question ("To whom, if anyone, did your firm release or distribute the report and when?") and asked whether Skadden should have disclosed any lobbying or public relations firms to which it might have provided the SA Report. HUNT wanted to know everyone Skadden provided the SA Report to, if that had happened, and that's why the question was posed broadly.

Tabs 10 and 11 - SDNY_00598-624

HUNT reviewed several drafts of the "Must Register" letter that were prepared in July and August 2013. HUNT believed that the drafting process of this letter was very typical and she did not recall any additional contact with Skadden during that period.

Tab 12 - SDNY_ 00015-16

HUNT reviewed the final version of the "Must Register" letter that was transmitted to Skadden on 09/05/13.

HUNT and KEVIN CONNOLLY drafted the "Must Register" letter, and they based their decision on the facts provided by Skadden during their correspondence with the FARA unit, as well as public source information. The key fact requiring registration was Skadden's dissemination of the SA Report to the media.

HUNT was asked what changed in the FARA unit's analysis between the issuance of the "Must Register" letter in September 2013 and the "No Obligation" letter produced by the unit in January 2014. As of September 2013, HUNT believed that Skadden had affirmatively disseminated the SA Report to the New York Times and other publications, and then contacted the media to address errors in their reporting. At the October 2013 meeting with CRAIG, GROSS, and SPIEGEL, HUNT was told that Skadden only sent the SA Report to the media after the articles were written, and the purpose of sending the report was to correct the inaccuracies in the published articles.

Tab 13 - SDNY_00625-629

HUNT did not recall the communications with SHAYLA PARKER, another Skadden employee, referenced in the 09/17/13 - 09/18/13 emails.

Tab 14 - SDNY_00630-631

HUNT did not recall returning CRAIG's 09/20/13 call acknowledging receipt of the "Must Register" letter.

Tabs 15 (SDNY_00054), 16 (00008-9), and 17 (00650-651)

HUNT reviewed CRAIG's 09/26/13 letter notifying her that LAWRENCE SPIEGEL would be calling to request a meeting to discuss the "Must Register" letter, as well as a subsequent series of internal FARA unit emails regarding the scheduling of the meeting.

HUNT had nothing to add regarding the scheduling of the meeting and did not remember the significance of Skadden partner CLIFF SLOAN's potential attendance. HUNT likely forwarded the information to THOMAS REILLY due to SLOAN's media and publishing background.

Tab 18 - SDNY_00002

HUNT reviewed CRAIG's letter dated 10/10/13, which was transmitted to the FARA unit the day after the 10/09/13 meeting with CRAIG, GROSS, and SPIEGEL.

HUNT was joined at the meeting by KEVIN CONNOLLY, TIM PUGH, and ALEX MUDD from the FARA unit. HUNT had met with KEN GROSS many times in connection with various registrants, but believes this was likely the only time she met with GREG CRAIG and LAWRENCE SPIEGEL.

At the meeting, Skadden represented that their only contact with the media was correcting errors in response to requests from the media. Skadden was

adamant that there had been no proactive outreach; because this point was the crux of their discussion, HUNT asked Skadden to put it in writing. Skadden did so in the 10/10/13 letter signed by CRAIG.

HUNT was asked if it would have been relevant to know whether Skadden affirmatively sent the SA Report to the newspapers, or if Skadden had reached out to the press to comment on the SA Report. HUNT said both facts would have been relevant - that's the gist of FARA. However, if Skadden's assignment on behalf of the Government of Ukraine had included dissemination of the report, then it might not matter whether Skadden contacted reporters or the reporters contacted Skadden - it would still be registrable activity, because the goal would be getting the SA Report in front of the U.S. public.

Skadden denied that distribution of the SA Report was part of their mandate. CRAIG made it clear that the only reason he contacted the media was to correct errors in reporting. HUNT agreed that if this was the only contact, then no registration would be required.

Tab 21 - SDNY_00672

HUNT reviewed a series of internal emails dated 02/28/14 and 03/04/14 that referenced a call between HUNT and CRAIG. HUNT believed the call was related to a different issue.

Tab 22 - SDNY_00675

HUNT reviewed an email from JEFFREY GILDAY (Research Specialist at the FARA unit) dated 12/12/14 with the subject line "Gregory Craig - Skadden Arps." HUNT believed this call was also unrelated to the SA Report.

HUNT said the question of Skadden's obligation to register in connection with its work on the SA Report never came up again after Skadden got the answer they wanted.

Exhibit 21

OMB No. 1124-0001; Expires May 31, 2020

U.S. Department of Justice

Washington, DC 20530

Registration Statement

Pursuant to the Foreign Agents Registration Act of 1938, as amended

INSTRUCTION SHEET-READ CAREFULLY

1. *Use.* All persons required to register under this Act shall use this form in submitting the information required by Section 2(a).

2. *Read Act and Rules.* Registrant should carefully read the Act and the Rules thereunder before completing this form.

3. *Answer.* Unless otherwise specifically instructed in this form, a registrant shall answer every item on this form. Whenever the item is inapplicable or the appropriate response to an item is "none", an express statement to that effect shall be made.

4. *Attachments.* Inserts and riders of less than full page size shall not be used. Whenever insufficient space is provided for response to any item, reference shall be made in such space to a full insert page or pages on which the item number and inquiry shall be restated and a complete answer given.

5. *Filing.* The completed statement, including all exhibits, shall be filed in electronic form with the Registration Unit, Counterintelligence and Export Control Section, National Security Division, U.S. Department of Justice at https://www.fara.gov. The statement must be filed in accordance with 28 U.S.C. § 1746. A copy should be retained by the registrant.

6. *Filing Fee.* The filing of this document requires the payment of a filing fee for each listed foreign principal as set forth in Rule 5(d)(1), 28 C.F.R. § 5.5(d)(1).

7. *Privacy Act Statement.* The filing of this document is required for the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.*, for the purposes of registration under the Act and public disclosure. Provision of the information requested is mandatory, and failure to provide the information is subject to the penalty and enforcement provisions established in Section 8 of the Act. Every registration statement, short form registration statement, supplemental statement, exhibit, amendment, copy of informational materials or other document or information filed with the Attorney General under this Act is a public record open to public examination, inspection and copying during the posted business hours of the Registration Unit in Washington, DC. Statements are also available online at the Registration Unit's webpage: https://www.fara.gov. One copy of every such document, other than informational materials, is automatically provided to the Secretary of State pursuant to Section 6(b) of the Act, and copies of any and all documents are routinely made available to other agencies, departments and Congress pursuant to Section 6(c) of the Act. The Attorney General also transmits a semi-annual report to Congress on the administration of the Act which lists the names of all agents registered under the Act and the foreign principals they represent. This report is available to the public in print and online at: https://www.fara.gov.

8. *Public Reporting Burden.* Public reporting burden for this collection of information is estimated to average 1.375 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Registration Unit, Counterintelligence and Export Control Section, National Security Division, U.S. Department of Justice, Washington, DC 20530; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Note: *Omit this instruction sheet when filing this Statement.*

OMB No. 1124-0001; Expires May 31, 2020

U.S. Department of Justice

Washington, DC 20530

Registration Statement

Pursuant to the Foreign Agents Registration Act of 1938, as amended

I--REGISTRANT

1. Name of Registrant

2. Registration No. (To Be Assigned By the FARA Registration Unit)

3. Principal Business Address

4. If the registrant is an individual, furnish the following information:

(a) Residence address(es)

(b) Other business address(es), if any

(c) Nationality

(d) Year of birth

(e) Present citizenship

(f) If present citizenship not acquired by birth, state when, where and how acquired

(g) Occupation

5. If the registrant is not an individual, furnish the following information:

(a) Type of organization: Committee ☐ Association ☐ Partnership ☐ Voluntary group ☐
Corporation ☐ Other *(specify)* _____

(b) Date and place of organization

(c) Address of principal office

(d) Name of person in charge

(e) Locations of branch or local offices

(f) If a membership organization, give number of members

(g) List all partners, officers, directors or persons performing the functions of an officer or director of the registrant.

Name	Residence Address(es)	Position	Nationality

(h) Which of the above named persons renders services directly in furtherance of the interests of any of the foreign principals?

(i) Describe the nature of the registrant's regular business or activity.

(j) Give a complete statement of the ownership and control of the registrant.

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6. List all employees who render services to the registrant directly in furtherance of the interests of any of the foreign principals in other than a clerical, secretarial, or in a related or similar capacity.

Name	Residence Address(es)	Nature of Services

II--FOREIGN PRINCIPAL

7. List every foreign principal[1] for whom the registrant is acting or has agreed to act.

Foreign Principal	Principal Address(es)

III--ACTIVITIES

8. In addition to the activities described in any Exhibit B to this statement, will you engage or are you engaging now in activity on your own behalf which benefits any or all of your foreign principals? Yes ☐ No ☐

If yes, describe fully.

IV--FINANCIAL INFORMATION

9. (a) **RECEIPTS-MONIES**

During the period beginning 60 days prior to the date of your obligation to register[2] to the time of filing this statement, did you receive from any foreign principal named in Item 7 any contribution, income, or money either as compensation or for disbursement or otherwise? Yes ☐ No ☐

If yes, set forth below in the required detail and separately for each such foreign principal an account of such monies.[3]

Foreign Principal	Date Received	Purpose	Amount
		Total	

1 The term "foreign principal," as defined in Section 1(b) of the Act, includes a foreign government, foreign political party, foreign organization, foreign individual and, for the purpose of registration, an organization or an individual any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign government, foreign political party, foreign organization or foreign individual.

2 An agent must register within ten days of becoming an agent, and before acting as such.

3 A registrant is required to file an Exhibit D if he collects or receives contributions, loans, moneys, or other things of value for a foreign principal, as part of a fundraising campaign. There is no printed form for this exhibit. (See Rule 201(e), 28 C.F.R. § 5.201(e)).

(b) **RECEIPTS-THINGS OF VALUE**

During the period beginning 60 days prior to the date of your obligation to register[4] to the time of filing this statement, did you receive from any foreign principal named in Item 7 anything of value[5] other than money, either as compensation, or for disbursement, or otherwise? Yes ☐ No ☐

If yes, furnish the following information:

Foreign Principal	Date Received	Thing of Value	Purpose

10. (a) **DISBURSEMENT-MONIES**

During the period beginning 60 days prior to the date of your obligation to register[6] to the time of filing this statement, did you spend or disburse any money in furtherance of or in connection with your activities on behalf of any foreign principal named in Item 7? Yes ☐ No ☐

If yes, set forth below in the required detail and separately for each such foreign principal named including monies transmitted, if any, to each foreign principal.

Date	To Whom	Purpose	Amount

(b) **DISBURSEMENTS-THINGS OF VALUE**

During the period beginning 60 days prior to the date of your obligation to register[7] to the time of filing this statement, did you dispose of any thing of value[8] other than money in furtherance of or in connection with your activities on behalf of any foreign principal named in Item 7? Yes ☐ No ☐

If yes, furnish the following information:

Date	Recipient	Foreign Principal	Thing of Value	Purpose

(c) **DISBURSEMENTS-POLITICAL CONTRIBUTIONS**

During the period beginning 60 days prior to the date of your obligation to register[9] to the time of filing this statement, did you, the registrant, or any short form registrant, make any contribution of money or other thing of value from your own funds and on your own behalf in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office? Yes ☐ No ☐

If yes, furnish the following information:

Date	Amount or Thing of Value	Political Organization or Candidate	Location of Event

4, 6, 7 and 9 See Footnote 2, on page 3.

5 and 8 Things of value include but are not limited to gifts, interest free loans, expense free travel, favored stock purchases, exclusive rights, favored treatment over competitors, "kickbacks", and the like.

V--INFORMATIONAL MATERIALS[10]

11. Will the activities of the registrant on behalf of any foreign principal include the preparation or dissemination of informational materials? Yes ☐ No ☐

IF YES, RESPOND TO THE REMAINING ITEMS IN THIS SECTION V.

12. Identify each such foreign principal.

13. Has a budget been established or specified sum of money allocated to finance your activities in preparing or disseminating informational materials? Yes ☐ No ☐

If yes, identify each such foreign principal, specify amount and for what period of time.

14. Will any public relations firms or publicity agents participate in the preparation or dissemination of such informational materials?
Yes ☐ No ☐

If yes, furnish the names and addresses of such persons or firms.

15. Activities in preparing or disseminating informational materials will include the use of the following:

☐ Radio or TV broadcasts ☐ Magazine or newspaper ☐ Motion picture films ☐ Letters or telegrams
☐ Advertising campaigns ☐ Press releases ☐ Pamphlets or other publications ☐ Lectures or speeches
☐ Other *(specify)* _____

Electronic Communications

☐ Email
☐ Website URL(s): _____
☐ Social media website URL(s): _____
☐ Other *(specify)* _____

16. Informational materials will be disseminated among the following groups:

☐ Public officials ☐ Civic groups or associations
☐ Legislators ☐ Libraries
☐ Government agencies ☐ Educational groups
☐ Newspapers ☐ Nationality groups
☐ Editors ☐ Other *(specify)* _____

17. Indicate language to be used in the informational materials:

☐ English ☐ Other *(specify)* _____

10 The term informational materials includes any oral, visual, graphic, written, or pictorial information or matter of any kind, including that published by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or any means or instrumentality of interstate or foreign commerce or otherwise. Informational materials disseminated by an agent of a foreign principal as part of an activity in itself exempt from registration, or an activity which by itself would not require registration, need not be filed pursuant to Section 4(b) of the Act.

VI--EXHIBITS AND ATTACHMENTS

18. (a) The following described exhibits shall be filed with an initial registration statement:

Exhibit A- This exhibit, which is filed on Form NSD-3, sets forth the information required to be disclosed concerning each foreign principal named in Item 7.

Exhibit B- This exhibit, which is filed on Form NSD-4, sets forth the information concerning the agreement or understanding between the registrant and the foreign principal.

(b) An Exhibit C shall be filed when applicable. This exhibit, for which no printed form is provided, consists of a true copy of the charter, articles of incorporation, association, constitution, and bylaws of a registrant that is an organization. A waiver of the requirement to file an Exhibit C may be obtained for good cause shown upon written application to the Assistant Attorney General, National Security Division, U.S. Department of Justice, Washington, DC 20530. (See Rule 201(c) and (d)).

(c) An Exhibit D shall be filed when applicable. This exhibit, for which no printed form is provided, sets forth an account of money collected or received as a result of a fundraising campaign and transmitted for a foreign principal. (See Rule 201 (e)).

VII--EXECUTION

In accordance with 28 U.S.C. § 1746, the undersigned swear(s) or affirm(s) under penalty of perjury that he/she has (they have) read the information set forth in this registration statement and the attached exhibits and that he/she is (they are) familiar with the contents thereof and that such contents are in their entirety true and accurate to the best of his/her (their) knowledge and belief, except that the undersigned make(s) no representation as to truth or accuracy of the information contained in the attached Short Form Registration Statement(s), if any, insofar as such information is not within his/her (their) personal knowledge.

(Date of signature)	(Print or type name under each signature or provide electronic signature[11])
_____	_____
_____	_____
_____	_____
_____	_____

11 This statement shall be signed by the individual agent, if the registrant is an individual, or by a majority of those partners, officers, directors or persons performing similar functions, if the registrant is an organization, except that the organization can, by power of attorney, authorize one or more individuals to execute this statement on its behalf.

Exhibit 22

STATUTE OF LIMITATIONS TOLLING AGREEMENT

The parties to this Statute of Limitations Tolling Agreement ("Agreement") are Gregory Craig ("Craig") and the Office of the United States Attorney for the Southern District of New York, on behalf of the United States of America.

The parties hereto agree as follows:

1. The period beginning August 21, 2018, and terminating three months thereafter on November 21, 2018 ("the tolled period"), will be excluded from any calculation of time for the purpose of the statute of limitations under the laws of the United States concerning any federal charges that may be brought against Craig under any provision of federal criminal law, including but not limited to charges under the Foreign Agents Registration Act of 1938 ("FARA"), 22 U.S.C. §§ 611-621, 18 U.S.C. § 371, and 18 U.S.C. § 1001, pertaining to conduct including but not limited to Craig's activities relating to the Government of Ukraine and a report titled "The Tymoshenko Case" released to the public on or about December 13, 2012, and statements made by Craig and documents signed by Craig and submitted to the FARA Registration Unit of the Department of Justice. Nothing contained in this Agreement shall be construed to prevent Craig from asserting a defense based upon the statute of limitations with respect to any time period other than the tolled period.

2. Having been advised by his undersigned counsel, Craig expressly waives his right to raise any defense or make any motion to dismiss on the grounds of expiration of the statute of limitations based, in whole or in part, on the failure of a grand jury to act with respect to the above-referenced charges during the tolled period.

3. This Agreement shall not be construed as a waiver of any other right or defense that Craig may have as to grand jury proceedings or as to any proceeding or action arising therefrom.

GEOFFREY S. BERMAN
United States Attorney
Southern District of New York

Dated: August 21, 2018 By: /s/
Kristy J. Greenberg / Jane Kim / George D. Turner
Assistant United States Attorneys

Dated: ~~August~~ September 7, 2018
Gregory Craig

Dated: ~~August~~ September 8, 2018
William W. Taylor / William J. Murphy / Adam Abelson
Counsel for Gregory Craig

Exhibit 23

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,813

ERNEST KING BRAMBLETT, *Appellant*

v.

UNITED STATES OF AMERICA, *Appellee*

Appeal from the United States District Court for the District of Columbia

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APPENDIX

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714 Filed in Open Court June 17, 1953

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

(Grand Jury Impaneled on September 2, 1952, and Sworn in on September 3, 1952)

Criminal No. 971-'53

Grand Jury Original

Vio. 18 U.S.C. 1001

UNITED STATES OF AMERICA

v.

ERNEST KING BRAMBLETT

Indictment

COUNT ONE

In order to accomplish the purpose of a scheme, defendant Ernest King Bramblett, on or about August 27, 1949, as a member of Congress from the 11th District, State of California, presented to the Disbursing Office of the House of Representatives, in Washington, D. C., a Clerk-Hire Allowance form dated August 27, 1949, in which he designated Margaret M. Swanson to be a clerk to him in the discharge of his official and representative duties to take effect beginning September 1, 1949, said clerk to receive compensation at the basic rate of $4700.00 per annum. Defendant's purpose in the scheme was to convert to his own use the compensation authorized by this Clerk-Hire Allowance form to be paid to Margaret M. Swanson.

Defendant Bramblett, having so presented said Clerk-Hire Allowance form, did, on or about June 30, 1950, within the District of Columbia, in a matter within the jurisdiction of a department and agency of the United States, namely

the aforementioned Disbursing Office of the House of Representatives, knowingly and wilfully falsify by a scheme a material fact, by knowingly and wilfully continuing in full force and effect up to and including June 30, 1950, the designation contained in said document. The material fact falsified by the scheme was the representation by that

715 designation that the said Margaret M. Swanson during June, 1950, was a clerk to defendant in the discharge of his official and representative duties and entitled to receive compensation as such, the true fact being that the said Margaret M. Swanson was not such a clerk, as defendant well knew.

COUNT TWO

Defendant Bramblett, having presented, as alleged in Count One, the Clerk-Hire Allowance form described therein, did, on or about July 31, 1950, within the District of Columbia, in a matter within the jurisdiction of a department and agency of the United States, namely the aforementioned Disbursing Office of the House of Representatives, knowingly and wilfully falsify by a scheme a material fact, by knowingly and wilfully continuing in full force and effect up to and including July 31, 1950, the designation contained in said document. The material fact falsified by the scheme was the representation by that designation that the said Margaret M. Swanson during July, 1950, was a clerk to defendant in the discharge of his official and representative duties and entitled to receive compensation, the true fact being that the said Margaret M. Swanson was not such a clerk, as defendant well knew.

COUNT THREE

Defendant Bramblett, having presented, as alleged in Count One, the Clerk-Hire Allowance form described therein, did, on or about August 31, 1950, within the District of Columbia, in a matter within the jurisdiction of a department and agency of the United States, namely the

aforementioned Disbursing Office of the House of Representatives, knowingly and wilfully falsify by a scheme a material fact, by knowingly and wilfully continuing in full force and effect up to and including August 31, 1950, the designation contained in said document. The material fact falsified by the scheme was the representation by that designation that the said Margaret M. Swanson
716 during August, 1950, was a clerk to defendant in the discharge of his official and representative duties and entitled to receive compensation, the true fact being that the said Margaret M. Swanson was not such a clerk, as defendant well knew.

Count Four

Defendant Bramblett, having presented, as alleged in Count One, the Clerk-Hire Allowance form described therein, did, on or about September 29, 1950, within the District of Columbia, in a matter within the jurisdiction of a department and agency of the United States, namely the aforementioned Disbursing Office of the House of Representatives, knowingly and wilfully falsify by a scheme a material fact, by knowingly and wilfully continuing in full force and effect up to and including September 29, 1950, the designation contained in said document. The material fact falsified by the scheme was the representation by that designation that the said Margaret M. Swanson during September, 1950, was a clerk to defendant in the discharge of his official and representative duties and entitled to receive compensation, the true fact being that the said Margaret M. Swanson was not such a clerk, as defendant well knew.

Count Five

Defendant Bramblett, having presented, as alleged in Count One, the Clerk-Hire Allowance form described therein, did, on or about October 31, 1950, within the District of Columbia, in a matter within the jurisdiction of a

department and agency of the United States, namely the aforementioned Disbursing Office of the House of Representatives, knowingly and wilfully falsify by a scheme a material fact, by knowingly and wilfully continuing in full force and effect up to and including October 31, 1950, the designation contained in said document. The material fact falsified by the scheme was the representation by that designation that the said Margaret M. Swanson dur-
717 ing October, 1950, was a clerk to defendant in the discharge of his official and representative duties and entitled to receive compensation, the true fact being that the said Margaret M. Swanson was not such a clerk, as defendant well knew.

Count Six

Defendant Bramblett, having presented, as alleged in Count One, the Clerk-Hire Allowance form described therein, did, on or about November 30, 1950, within the District of Columbia, in a matter within the jurisdiction of a department and agency of the United States, namely the aforementioned Disbursing Office of the House of Representatives, knowingly and wilfully falsify by a scheme a material fact, by knowingly and wilfully continuing in full force and effect up to and including November 30, 1950, the designation contained in said document. The material fact falsified by the scheme was the representation by that designation that the said Margaret M. Swanson during November, 1950, was a clerk to defendant in the discharge of his official and representative duties and entitled to receive compensation, the true fact being that the said Margaret M. Swanson was not such a clerk, as defendant well knew.

Count Seven

Defendant Bramblett, having presented, as alleged in Count One, the Clerk-Hire Allowance form described therein, did, on or about December 20, 1950, within the

District of Columbia, in a matter within the jurisdiction of a department and agency of the United States, namely the aforementioned Disbursing Office of the House of Representatives, knowingly and wilfully falsify by a scheme a material fact, by knowingly and wilfully continuing in full force and effect up to and including December 20, 1950, the designation contained in said document. The material fact falsified by the scheme was the representation by that designation that the said Margaret M.
718 Swanson during December, 1950, was a clerk to defendant in the discharge of his official and representative duties and entitled to receive compensation, the true fact being that the said Margaret M. Swanson was not such a clerk, as defendant well knew.

COUNT EIGHT

On or about November 1, 1950, defendant Bramblett, within the District of Columbia, in a matter within the jurisdiction of a department and agency of the United States, namely the aforementioned Disbursing Office of the House of Representatives, knowingly and wilfully falsified by a scheme a material fact. To accomplish the purpose of the scheme, the defendant, as a member of Congress from the 11th District, State of California, presented to the Disbursing Office of the House of Representatives, in Washington, D. C., a Clerk-Hire Allowance form dated November 1, 1950, in which he designated Olga Hardaway to be a clerk to him in the discharge of his official and representative duties to take effect beginning November 1, 1950, said clerk to receive compensation at the basic rate of $2,200.00 per annum. Defendant's purpose in the scheme was to convert to his own use the compensation authorized by this Clerk-Hire Allowance form to be paid to Olga Hardaway. The material fact falsified by the scheme was the designation of the said Olga Hardaway to be such clerk beginning November 1, 1950, the true fact being that defendant did not then intend the said Olga Hardaway then to begin to be such a clerk.

COUNT NINE

Defendant Bramblett, having presented, as alleged in Count Eight, the Clerk-Hire Allowance form described therein, did, on or about November 30, 1950, within the District of Columbia, in a matter within the jurisdiction of a department and agency of the United States, namely the aforementioned Disbursing Office of the House of Representatives, knowingly and wilfully falsify by a scheme a material fact, by knowingly and wilfully continuing in full force and effect up to and including November
719 30, 1950, the designation contained in said document. The material fact falsified by the scheme was the representation by that designation that the said Olga Hardaway during November, 1950, was a clerk to defendant in the discharge of his official and representative duties and entitled to receive compensation, the true fact being that the said Olga Hardaway was not such a clerk, as defendant well knew.

COUNT TEN

The allegations of Count Eight are repeated here but charge the offense on or about December 1, 1950, by the presentation by defendant Bramblett of a Clerk-Hire Allowance form, undated, designating Olga Hardaway to succeed herself to take effect beginning December 1, 1950, and to receive compensation at the basic rate of $600 per annum. The material fact falsified by the scheme was the designation of the said Olga Hardaway to be such a clerk beginning December 1, 1950, to succeed herself, the true fact being that the said Olga Hardaway was not then such a clerk so intended by defendant to begin such work at the stated compensation.

COUNT ELEVEN

Defendant Bramblett, having presented, as alleged in Count Ten, the Clerk-Hire Allowance form described

therein, did, on or about December 20, 1950, within the District of Columbia, in a matter within the jurisdiction of a department and agency of the United States, namely the aforementioned Disbursing Office of the House of Representatives, knowingly and wilfully falsify by a scheme a material fact, by knowingly and wilfully continuing in full force and effect up to and including December 20, 1950, the designation contained in said document. The material fact falsified by the scheme was the representation by that designation that the said Olga Hardaway during
720 December, 1950, was a clerk to defendant in the discharge of his official and representative duties and entitled to receive compensation, the true fact being that the said Olga Hardaway was not such a clerk, as defendant well knew.

COUNT TWELVE

The allegations of Count Eight are repeated here but charge the offense on or about January 1, 1951, by the presentation by defendant Bramblett of a Clerk-Hire Allowance form, dated January 1, 1951, designating Olga Hardaway to succeed herself to take effect beginning January 1, 1951, and to receive compensation at the basic rate of $800 per annum. The material fact falsified by the scheme was the designation of the said Olga Hardaway to be such a clerk beginning January 1, 1951, to succeed herself, the true fact being that the said Olga Hardaway was not then such a clerk so intended by defendant to begin such work at the stated compensation.

COUNT THIRTEEN

Defendant Bramblett, having presented, as alleged in Count Twelve, the Clerk-Hire Allowance form described therein, did, on or about January 31, 1951, within the District of Columbia, in a matter within the jurisdiction of a department and agency of the United States, namely the aforementioned Disbursing Office of the House of

Representatives, knowingly and wilfully falsify by a scheme a material fact, by knowingly and wilfully continuing in full force and effect up to and including January 31, 1951, the designation contained in said document. The material fact falsified by the scheme was the representation by that designation that the said Olga Hardaway during January, 1951, was a clerk to defendant in the discharge of his official and representative duties and entitled to receive compensation, the true fact being that the said Olga Hardaway was not such a clerk, as defendant well knew.

721 COUNT FOURTEEN

Defendant Bramblett, having presented, as alleged in Count Thirteen, the Clerk-Hire Allowance form described therein, did, on or about February 28, 1951, within the District of Columbia, in a matter within the jurisdiction of a department and agency of the United States, namely the aforementioned Disbursing Office of the House of Representatives, knowingly and wilfully falsify by a scheme a material fact, by knowingly and wilfully continuing in full force and effect up to and including February 28, 1951, the designation contained in said document. The material fact falsified by the scheme was the representation by that designation that the said Olga Hardaway during February, 1951, was a clerk to defendant in the discharge of his official and representative duties and entitled to receive compensation, the true fact being that the said Olga Hardaway was not such a clerk, as defendant well knew.

COUNT FIFTEEN

The allegations of Count Eight are repeated here but charge the offense on or about March 1, 1951, by the presentation by defendant Bramblett, of a Clerk-Hire Allowance form, undated, designating Olga Hardaway to succeed herself to take effect beginning March 1, 1951, and to receive compensation at the basic rate of $100 per annum. The material fact falsified by the scheme was the designa-

tion of the said Olga Hardaway to be such a clerk beginning March 1, 1951, to succeed herself, the true fact being that the said Olga Hardaway was not then such a clerk so intended by defendant to begin such work at the stated compensation.

COUNT SIXTEEN

Defendant Bramblett, having presented, as alleged in Count Fifteen, the Clerk-Hire Allowance form described therein, did, on or about March 30, 1951, within the
722 District of Columbia, in a matter within the jurisdiction of a department and agency of the United States, namely the aforementioned Disbursing Office of the House of Representatives, knowingly and wilfully falsify by a scheme a material fact, by knowingly and wilfully continuing in full force and effect up to and including March 30, 1951, the designation contained in said document. The material fact falsified by the scheme was the representation by that designation that the said Olga Hardaway during March, 1951, was a clerk to defendant in the discharge of his official and representative duties and entitled to receive compensation, the true fact being that the said Olga Hardaway was not such a clerk, as defendant well knew.

COUNT SEVENTEEN

The allegations of Count Eight are repeated here but charge the offense on or about April 1, 1951, by the presentation by defendant Bramblett of a Clerk-Hire Allowance form, dated April 1, 1951, designating Olga Hardaway to succeed herself and Janet Dunnett to take effect beginning April 1, 1951, and to receive compensation at the basic rate of $800 per annum. The material fact falsified by the scheme was the designation of the said Olga Hardaway to be such a clerk beginning April 1, 1951, to succeed herself and Janet Dunnett, the true fact being that the said Olga Hardaway was not then such a clerk so intended by defendant to begin such work at the stated compensation.

COUNT EIGHTEEN

Defendant Bramblett, having presented, as alleged in Count Seventeen, the Clerk-Hire Allowance form described therein, did, on or about April 30, 1951, within the District of Columbia, in a matter within the jurisdiction of a department and agency of the United States, namely the aforementioned Disbursing Office of the House of Represenatives, knowingly and wilfully falsify by a scheme
723 a material fact, by knowingly and wilfully continuing in full force and effect up to and including April 30, 1951, the designation contained in said document. The material fact falsified by the scheme was the representation by that designation that the said Olga Hardaway during April, 1951, was a clerk to defendant in the discharge of his official and representative duties and entitled to receive compensation, the true fact being that the said Olga Hardaway was not such a clerk, as defendant well knew.

LEO A. ROVER
United States Attorney in and for the District of Columbia

A TRUE BILL:
THADDEUS U. SANDIFER
(*Deputy*) Foreman.

724 Filed July 27, 1953

* * * * * * * * * * *

Motion to Dismiss Indictment

Comes now the defendant by his attorney and respectfully moves this Court to dismiss the indictment herein for the following reasons:

1. The grand jury which indicted this defendant was invalidly constituted in that a qualified class of jurors was intentionally and systematically excluded from the panel. The Jury Commission for the District of Columbia intentionally and systematically excluded from the grand jury

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA *v.* **GREGORY B. CRAIG**, *Defendant.*	**Case No. 1:19-cr-0125 (ABJ)**

[PROPOSED]
ORDER

Upon consideration of Defendant Gregory B. Craig's Motion to Dismiss Count One, it is hereby

ORDERED that the Motion is **GRANTED**. It is

FURTHER ORDERED that Count One of the Indictment is **DISMISSED**.

Dated: _____

_____
AMY BERMAN JACKSON
United States District Judge